TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 424.

WILLIAM GRIMM, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED JULY 20, 1892.

(15,085.)

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the district court of the United States for the eastern division of the eastern judicial district of Missouri, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, at the May term, 1892, thereof, between The United States, plaintiff, and William Grimm, defendant, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the said record and proceedings aforesaid at the city of Washington and filed in the office of the clerk of the Supreme Court of the United States on or before the 23rd day of July, 1892, to the end that, the record and proceedings aforesaid being inspected, the Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 23rd day of June, in the year of our Lord one thousand eight hundred and ninety-two.

Issued at office, in the city of St. Louis, with the seal of the district court of the United States for the eastern division of the eastern judicial district of Missouri, dated as aforesaid.

Seal of the United States District Court, Eastern Division of the Eastern Judicial District of Missouri.

WM. MORGAN,
Clerk of the United States District Court in and for the Eastern Division of the Eastern Judicial District of Missouri.
By —— ——, *Deputy.*

Allowed by—
DAVID J. BREWER,
Associate Justice Supreme Court U. S.

June 23, '92.

Supersedeas bond fixed at $4,000.00.
Sureties to be approved by judge of dist. court.
DAVID J. BREWER, *Justice.*

[Endorsed:] No. 3406. United States district court, eastern division of the eastern judicial district of Missouri. The United States *vs.* William Grimm. Writ of error to the district court of the United States for the eastern division of the eastern judicial district of Missouri. Filed 25th day of June, 1892. Wm. Morgan, clerk.

Return to Writ.

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said district court, at office, in the city of St. Louis, this 16th day of July, A. D. 1892.

Seal of the United States District Court, Eastern Division of the Eastern Judicial District of Missouri.

WM. MORGAN,
Clerk of said Court.

2 The United States of America to the United States of America, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the eastern division of the eastern judicial district of Missouri, wherein William Grimm is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Amos M. Thayer, judge of the district court of the United States for the eastern district of Missouri, this 25th day of June, in the year of our Lord one thousand eight hundred and ninety-two.

AMOS M. THAYER,
United States District Judge for the Eastern District of Missouri.

Service acknowledged June 28th, 1892.

GEO. D. REYNOLDS,
U. S. Att'y.

[Endorsed:] No. 3406. United States district court, eastern division of the eastern judicial district of Missouri. The United States *vs.* William Grimm. Citation. Filed 28 day of June, 1892. Wm. Morgan, clerk.

3 UNITED STATES OF AMERICA, *Eastern Division of the Eastern Judicial District of Missouri*, } ss:

In the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES, Plaintiff, *vs.* WILLIAM GRIMM, Defendant. } Indictment for Violation of Section 2, p. 496, Vol. 25, of the U. S. Statutes at Large.

Be it remembered that on the 6th day of June, A. D. 1891, the grand jurors of the United States of America in and for the eastern division of the eastern judicial district of Missouri returned into the district court of the United States in and for said division of said district an indictment in the above cause; which said indictment is in the words and figures following, to wit:

Indictment.

UNITED STATES OF AMERICA, *Eastern Division of the Eastern Judicial District of Missouri*, } ss:

In the District Court of the United States in and for said Division of said District, at the May Term Thereof, A. D. 1891.

The grand jurors of the United States, duly empaneled, sworn, and charged to enquire in and for the said division of said judicial district of Missouri, upon their oaths present—

That one William Grimm, late of said division of said district, heretofore, to wit, on the twenty-third day of the month of July, in the year of our Lord eighteen hundred and ninety, at said division of said district, did then and there unlawfully, feloniously, and knowingly deposit and cause to be deposited in the post office of the United States at St. Louis, Missouri, for mailing and delivery, a written and printed letter and notice giving information, directly and indirectly, to one Robert W. McAfee and divers other persons, whose names are to the jurors aforesaid unknown and for that reason cannot be herein stated, where, how, of whom, and by what means obscene, lewd, and lascivious pictures, papers, and prints of an indecent character and intended and adapted for an
4 indecent and immoral use might be obtained, which said letter and notice was then and there non-mailable matter and was then and there contained in an envelope and wrapper bearing and having thereon the address and superscription following, to wit, "Mr. Herman Hintress, car- of Bates house, Indianapolis, Ind.," contrary to the form of the statutes of the United States in such case made and provided and against its peace and dignity.

Second count. And the grand jurors aforesaid upon their oaths aforesaid do further present that afterwards, to wit, on the day and year aforesaid, at the division and district aforesaid, said William Grimm, late of said division of said district, then and there re-

ceived a letter, addressed and delivered to him, of the following tenor:

"RICHMOND, IND., *July* 21*st*, 1890.

Mr. William Grimm, Saint Louis, Mo.

DEAR SIR: A friend of mine has just showed me some fancy photographs and advised me that they could be obtained from you. I am on the road all the time, and I am sure many of them could be sold in the territory over which I travel. How many different kinds can you furnish? Send me price-list showing your rates by the hundred and dozen. Address me at once at Indianapolis, Ind., care Bates house, and I will send you a trial order.

HERMAN HUNTRESS."

And the grand jurors aforesaid upon their oaths aforesaid do further present that on the day and year first aforesaid the said William Grimm then and there had in his possession and under his control a large number, to wit, eight hundred, obscene, lewd, and lascivious pictures, papers, and prints of an indecent character and intended and adapted for an indecent and immoral use, and that said William Grimm, in response to said letter, on the day and year first aforesaid, did then and there unlawfully, feloniously, and knowingly deposit and cause to be deposited in the post office of the United States at St. Louis, Missouri, for mailing and delivery, a written and printed letter and notice giving information, directly and indirectly, to one Robert W. McAfee and divers other
5 persons, whose names are to the jurors aforesaid unknown and for that reason cannot be herein stated, how, where, of whom, and by what means obscene, lewd, and lascivious pictures, papers, and prints of an indecent character and intended and adapted for an indecent and immoral use might be obtained, which said letter and notice was then and there non-mailable matter and was then and there contained in an envelope and wrapper bearing and having thereon the address and superscription following, to wit, "Mr. Herman Huntress, care of Bates house, Indianapolis, Ind.," and which said letter and notice is of the following tenor:

"Wm. Grimm, photograph and art studio, N. E. cor. of Jefferson avenue and Olive street.

ST. LOUIS, *July* 22, 1890.

Mr. Huntress, Richmond.

DEAR SIR: I received your letter this morning. I will let you have them for $2.00 per doz. & $12.50 per 100. I have about 200 negatives of actresses.

Respectfully, WM. GRIMM."

And the grand jurors aforesaid upon their oaths aforesaid do further present that on the day and year first aforesaid the said William Grimm, when he so deposited and caused to be deposited said last-named letter and notice in said post office, unlawfully, feloniously, and knowingly meant and intended thereby to give notice and did

thereby give notice and information to the writer of said first-named letter and to said McAfee and divers other persons, whose names are to the grand jurors aforesaid unknown, where, how, of whom, and by what means obscene, lewd, and lascivious pictures, papers, and prints of an indecent character and intended and adapted for an indecent and immoral use might be obtained, contrary to the form of the statutes of the United States in such case made and provided and against its peace and dignity.

Third count. And the grand jurors aforesaid upon their oaths aforesaid do further present that afterwards, to wit, on the twenty-first day of the month of July, in the year of our Lord eighteen hundred and ninety, at said division of said district, the said
5½ William Grimm, late of said division of said district, did then and there unlawfully, feloniously, and knowingly deposit and cause to be deposited in the post office of the United States at St. Louis, Missouri, for mailing and delivery, a written and printed letter and notice giving information, directly and indirectly, to one Robert W. McAfee and divers other persons, whose names are to the jurors aforesaid unknown and for that reason cannot be herein stated, where, how, of whom, and by what means obscene, lewd, and lascivious pictures, papers, and prints of an indecent character and intended and adapted for an indecent and immoral use might be obtained, which said letter and notice was then and there non-mailable matter and was then and there contained in an envelope, and wrapper bearing and having thereon the address and superscription following, to wit, "Mr. Wm. Waters, care W. S. Campbell & Co., Clarksville, Texas," contrary to the form of the statutes of the United States in such case made and provided and against its peace and dignity.

Fourth count. And the grand jurors aforesaid upon their oaths aforesaid do further present that afterwards, to wit, on the day and year last aforesaid, at the division and district aforesaid, said William Grimm, late of said division of said district, then and there received a letter, addressed and delivered to him, of the following tenor:

"CLARKSVILLE, TEXAS, *July* 19, '90.

Wm. Grimm, Esq., St. Louis, Mo.

SIR: A gentleman has shown me some of your fancy photographs. Will you please advise me how many subjects you have and your price per dozen and per 100 lots. I have no doubt they will sell well. Address—

WM. W. WATERS,
Care W. S. Campbell & Co., Clarksville, Texas."

And the grand jurors aforesaid upon their oaths aforesaid do further present that on the day and year last aforesaid the said William Grimm then and there had in his possession and under his control a large number, to wit, eight hundred, obscene, lewd, and lascivious pictures, papers, and prints of an indecent character
6 and intended and adapted for an indecent and immoral use, and that said William Grimm, in response to said letter, on

the day and year last aforesaid did then and there unlawfully, feloniously, and knowingly deposit and cause to be deposited in the post office of the United States at St. Louis, Missouri, for mailing and delivery, a written and printed letter and notice giving information, directly and indirectly, to one Robert W. McAfee and divers other persons, whose names are to the jurors aforesaid unknown and for that reason cannot be herein stated, how, where, of whom, and by what means obscene, lewd, and lascivious pictures, papers, and prints of an indecent character and intended and adapted for an indecent and immoral use might be obtained, which said letter and notice was then and there non-mailable matter and was then and there contained in an envelope and wrapper bearing and having thereon the address and superscription following, to wit, "Mr. Wm. Waters, care W. S. Campbell & Co., Clarksville, Texas," and which said letter and notice is of the following tenor:

"Wm. Grimm, photograph and art studio, N. E. cor. of Jefferson avenue and Olive street.

St. Louis, *July* 21, 1890.

Mr. Wm. Waters:

Yours at hand the 21st. I will make them for $2.00 per doz. and $12.50 per 100.

Address—,

WM. GRIMM,
N. E. Cor. Olive and Jefferson, St. Louis, Mo.

P. S.—Different sisses.

And the grand jurors aforesaid upon their oaths aforesaid do further present that on the day and year last aforesaid the said William Grimm, when he so deposited and caused to be deposited said last-named letter and notice in said post office, unlawfully, feloniously, and knowingly meant and intended thereby to give notice and did thereby give notice and information to the writer of said first-named letter and to said McAfee and divers other persons, whose names are to the grand jurors aforesaid unknown, where, how, of whom, and by what means obscene, lewd, and lascivious pictures, papers, and prints of an indecent character and intended for an indecent and immoral use might be obtained, contrary to the form of the statutes of the United States in such case made and pro-
7 vided and against its peace and dignity.

GEO. D. REYNOLDS,
United States Attorney, Eastern District of Missouri.

And afterwards, to wit, at a regular stated term of the district court of the United States in and for the eastern division of the eastern judicial district of Missouri, begun and holden at the city of St. Louis, in said division of said district, on the first Monday, the fourth day, of May, A. D. 1891, — following further proceedings took place in said cause, on Saturday, the 13th day of June, A. D. 1891, to wit:

THE UNITED STATES, Plaintiff.) No. 3406. Indictment for Violation of Sec. 2, p. 496, Vol. 25, U. S. Statutes at Large.
vs.
WILLIAM GRIMM, Defendant.)

This day comes the United States, by district attorney, and the said defendant being present in court in compliance with the recognizance heretofore entered into by him in cause No. 3338, and also appearing by Louis A. Steber, Esquire, his attorney, on motion of the district attorney, it is ordered that the said defendant be arraigned upon the indictment herein against him, and thereupon the said defendant waives the reading of said indictment and formal arraignment thereon and pleads not guilty to the charges as contained in the said indictment.

And thereupon it is ordered that the said defendant find bail in the sum of two thousand dollars for his appearance at the next term of this court, to answer to the charges as contained in the said indictment herein.

And afterwards, to wit, at a regular stated term of the district court of the United States in and for said division of said district, begun and holden at the city of St. Louis, in said eastern division of said judicial district, on the first Monday, the second day, of May, A. D. 1892, the following further proceedings took place in said cause on Thursday, the 5th day of May, A. D. 1892, to wit:

THE UNITED STATES, Plaintiff.) No. 3406. Indictment for Violation of Sec. 2, p. 496, Vol. 25, U. S. Statutes at Large.
vs.
WILLIAM GRIMM, Defendant.)

This day comes the United States, by district attorney, and also comes the said defendant, by Louis A. Steber and D. P. Dyer, Esquires, his attorneys, and the said defendant, with the leave of the court, withdraws the plea of not guilty heretofore entered by him in this cause and files his demurrer to the indictment herein; which demurrer is thereupon submitted to the court; and the court, having considered the questions of law arising upon the said demurrer and being fully advised thereof, is of opinion that the law on said demurrer is for the said plaintiff, and, in accordance with such opinion, now orders that the said demurrer be, and the same is hereby, overruled.

And thereupon the said defendant, by his said attorneys, enters his plea of not guilty to the charges as contained in the said indictment.

Said demurrer, so filed as aforesaid, is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri. } ss:

In the District Court of the United States in and for said Division of said District.

UNITED STATES
vs.
WILLIAM GRIMM, Defendant.

Now comes William Grimm, defendant herein, and demurs to and moves to quash the first count of the indictment herein for the following reasons, to wit:

First. That it does not individuate any offense.

Second. That the allegations in said count contained are vague, indefinite, and uncertain and are not sufficient to and do not constitute an offense or statement of a cause of action against him.

Third. That under the letter mailed and addressed to "Mr. Herman Huntress, care of Bates house, Indianapolis, Ind.," no information of any kind through the United States mail was or could
9 be given to Robert W. McAfee and divers other persons, &c., it not being alleged that Robert W. McAfee and Herman Huntress are one and the same person or that that person is as well known by the one name as the other.

Fourth. That the alleged letter therein alluded to is not set forth either in full or in substance.

Defendant further demurs to and moves to quash the second count of the indictment herein for the following reasons, to wit:

First. It does not individuate any offense.

Second. That the allegations in said count contained are vague, indefinite, and uncertain, and are not sufficient to and do not constitute an offense or statement of a cause of action against him.

Third. That under a letter mailed and addressed to "Mr. Herman Huntress, care of Bates house, Indianapolis, Ind.," no information of any kind through the United States mail was or could be given to Robert W. McAfee and divers other persons, &c., it not being alleged that Robert W. McAfee and Herman Huntress are one and the same person or that that person is as well known by the one name as the other.

Fourth. That defendants alleged letter therein described as addressed to Herman Huntress on its face gave or gives no information of a prohibited character, nor, taken in combination with the alleged letter of the alleged Herman Huntress to defendant, does it give any such alleged prohibited information.

Fifth. That the letters to and from defendant, as therein alleged, do not pretend, nor can they be so understood, or the terms therein contained be enlarged by construction to mean that there could or would be furnished by defendant or any one else any "obscene, lewd, and lascivious pictures, papers, and prints of an indecent character and intended and adapted for an indecent and immoral use."

Sixth. That the allegations therein contained are inconsistent and repugnant to one another.

10 Defendant further demurs to and moves to quash the third count of the indictment herein for the following reasons, to wit:

First. That it does not individuate any offense.

Second. That the allegations in said count contained are vague, indefinite, and uncertain, and are not sufficient to and do not constitute an offense or statement of a cause of action against him.

Third. That under a letter mailed and addressed to "Mr. Wm. Waters, care W. S. Campbell & Co., Clarkesville, Texas," no information of any kind through the United States mail was or could be given to Robert W. McAfee and divers other persons, &c., it not being alleged that Robert W. McAfee and W. Waters are one and the same person, or that that person is as well known by the one name as the other.

Fourth. That the alleged letter therein alluded to is not set forth either in full or in substance.

Defendant further demurs to and moves to quash the fourth count of the indictment herein for the following reasons, to wit:

First. That it does not individuate any offense.

Second. That the allegations in said count contained are vague, indefinite, and uncertain, and are not sufficient to and do not constitute an offense or statement of a cause of action against him.

Third. That under a letter mailed and addressed to "Mr. Wm. Waters, care W. S. Campbell & Co., Clarkesville, Texas," no information of any kind through the United States mail was or could be given to Robert W. McAfee and divers other persons, &c., it not being alleged that Robert W. McAfee and Wm. Waters are one and the same person or that that person is as well known by the one name as the other.

Fourth. That defendant's alleged letter therein described as addressed to Mr. Wm. Waters, care W. S. Campbell & Co., Clarkesville, Texas," on its face gave or gives no information of a prohibited character, nor taken in combination with the alleged letter of the alleged Wm. Waters to defendant does it give any such alleged prohibited information.

Fifth. That the letter- to and from defendant as therein
11 alleged do not pretend nor can they be so understood or the terms therein contained be enlarged by construction to mean that there could or would be furnished by defendant or any one else any "obscene, lewd, and lascivious pictures, papers, and prints of an indecent character and intended and adapted for an indecent and immoral use."

Sixth That the allegations therein contained are inconsistent and repugnant to one another.

By LOUIS A. STEBER,
Attorney for Defendant.

Trial of Cause.

And the said defendant being present in court in compliance with the recognizance heretofore entered into by him in this cause, and this cause being regularly called for trial and both parties being ready for trial, on motion of the district attorney, it is ordered that a jury come, and thereupon come said jury, to wit, Jacob V. Slinkard, Jerome Karst, John R. Murphy, Alexander Kessler, Alexander C. Sloss, James W. Jeffries, William A. Hill, John Wright, C. H. Sampson, J. S. Barry, Louis B. Nast, and Narius Brewer, twelve good and lawful men, who were duly sworn well and truly to try, and true deliverance make between the United States and the said defendant upon the indictment herein, and who, after hearing the testimony of the witnesses and the arguments of counsel and after receiving instructions from the court, retired to consider of the verdict to be rendered herein; and the said jury afterwards returned into court the following verdict, to wit:

Verdict of Jury.

"We, the jury in the above-entitled cause, find the defendant not guilty as charged in the 1st and 3rd counts, by direction of the court, and guilty as charged in the indictment on second and fourth counts.

C. H. SAMPSON,
Foreman."

And thereupon the judgment and sentence of the court upon the verdict of guilty so returned by the jury in this cause is deferred until Wednesday next.

And it is further ordered that the said defendant be and appear at and before this court on Wednesday next, the eleventh day of this present month of May, and not depart from said court
12 without leave thereof in obedience to the recognizance heretofore entered into by him in this cause.

And it is further ordered that the photographs offered in evidence in this cause be delivered to the clerk of this court and that the same be impounded.

And afterwards, to wit, at said regular stated term of said court, begun and holden as aforesaid, the following further proceedings took place on Saturday, the seventh day of May, A. D. 1892, to wit:

THE UNITED STATES, Plaintiff, } No. 3406. Indictment for Violation of Section 2, p. 496, Vol. 25, U. S. Statutes at Large.
agst.
WILLIAM GRIMM, Defendant. }

This day comes the said defendant by D. P. Dyer and Louis A. Steber, Esquires, his attorneys, and files his motion in writing to set aside the verdict of the jury rendered herein and for a new trial of

said cause, and also files his motion in arrest of judgment in said cause for the reasons and causes in said motions set forth.

Said motion for a new trial so filed as aforesaid is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } *ss:*

In the District Court of the United States in and for said Division of said District.

UNITED STATES
vs.
WILLIAM GRIMM, Defendant.

Now comes the defendant in the above-entitled cause and moves the court to set aside the verdicts against him and to grant him a new trial for the following reasons, to wit:

First. Because the verdict is against the evidence.

Second. Because the verdict is against the law.

Third. Because the verdict is against the law and the evidence and the law under the evidence and the weight of the evidence.

Fourth. Because the court erred in admitting illegal and
13 incompetent evidence offered by the United States against the defendant upon the trial of said cause against the objection of the defendant then and there duly made at the time and to which action on the part of the court the defendant then and there excepted at the time.

Fifth. Because the court erred in its charge to the jury, and to the giving of which the defendant then and there duly excepted at the time.

Sixth. Because the court erred in permitting the introduction of any evidence whatever under any and all counts of the indictment against the objections of the defendant, then and there duly made at the time, and to which action on the part of the court the defendant then and there excepted at the time.

Seventh. Because under the evidence the court had no jurisdiction to try said cause or to submit the same to the jury for their verdict.

Eighth. Because the court erroneously permitted the introduction of evidence on the part of the United States at variance with allegations of the indictment and not pleaded or set forth therein, against the objections of the defendant then and there made at the time, and to which action on the part of the court the defendant then and there duly excepted at the time.

Ninth. Because there was no evidence introduced tending to prove the guilt of the defendant.

Tenth. Because the court erroneously refused to direct the jury to acquit the defendant on the evidence presented, to which refusal on

the part of the court the defendant then and there duly excepted at the time.

D. P. DYER AND
LOUIS A. STEBER,
Attorneys for Defendant.

The motion in arrest of judgment so filed as aforesaid is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } ss:

14 In the District Court of the United States in and for said Division of said District.

UNITED STATES
vs.
WILLIAM GRIMM, Defendant

Now comes the defendant, William Grimm, and moves the court to arrest the judgment herein, and that no judgment be rendered on the verdict of the jury or finding of the court for the following reasons, to wit:

First. That the facts stated or alleged in the indictment do not constitute an offense under the laws of the United States.

Second. That the verdict is insufficient to sustain a judgment.

Third. That the indictment in all of its counts is vague, indefinite, and uncertain and does not state any offense under the laws of the United States.

Fourth. Because the court had and has no jurisdiction over the subject-matter of this suit.

Fifth. Because the allegations in the indictment contained are inconsistent and repugnant to one another.

D. P. DYER &
LOUIS A. STEBER,
Attorneys for Defendant.

And afterwards, to wit, at said regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in said cause on Thursday, the 12th day of May, A. D. 1892, to wit:

THE UNITED STATES, Plaintiff, *ag'st* WILLIAM GRIMM, Defendant. } No. 3406. Indictment for Violation of Sec. 2, p. 496, Vol. 25, United States Statutes at Large.

This day comes the United States, by district attorney, and the said defendant being present in court in compliance with the recognizance heretofore entered into by him in this cause, and also appearing by Louis A. Steber and D. P. Dyer, Esquires, his attorneys, and the motion heretofore filed by the said defendant to set aside

the verdict of the jury and for a new trial of said cause and also the motion in arrest of judgment in said cause having been taken up, the same are thereupon submitted to the court, and the court,
15 not being fully advised of and concerning the same, takes further time in which to consider of its judgment thereon.

And afterwards, to wit, at said regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in said cause on Saturday, the 21st day of May, A. D. 1892, to wit:

THE UNITED STATES, Plaintiff, *vs.* WILLIAM GRIMM, Defendant.	No. 3406. Indictment for Violation of Sec. 2, p. 496, Vol. 25, United States Statutes at Large.

This day come the parties herein, by their respective attorneys, and the court, having considered the motion heretofore filed by the said defendant to set aside the verdict of the jury heretofore rendered in this cause and for a new trial of said cause, and also the motion in arrest heretofore filed herein, and being fully advised of and concerning the same, now orders that the same motions be, and the same are hereby, overruled.

And the said defendant being present in court in compliance with the recognizance heretofore entered into by him herein, the said district attorney asks the judgment and sentence of the court upon the verdict of guilty heretofore returned by the jury in this cause to the second and fourth counts of the indictment herein, and the said defendant having nothing further to say, after demand made of him why such judgment and sentence should not be so rendered—

It is, therefore, now considered by the court and as the judgment and sentence of the court upon the said verdict of guilty so returned by the jury in this cause that he, the said defendant, William Grimm, be confined and imprisoned in the penitentiary of the State of Missouri, at Jefferson City, Missouri, for and during the term of (1) one year and (1) one day, and that he be kept at hard labor during said term.

And, on the application of the said defendant, by his said attorneys, it is ordered that the execution of the judgment and
16 sentence in this cause be suspended until the eighteenth day of June next (1892), and that the said defendant be released from the custody of the marshal upon his giving bond in the sum of four thousand dollars for his appearance at and before this court on said eighteenth day of June next.

And thereupon the said defendant files his bond for appearance in the sum of four thousand dollars, with Julius Gross as surety, which bond is by the court approved.

The opinion of the court on the motion for a new trial and motion in arrest is in the words and figures following, to wit: The motion in arrest and for a new trial present three questions:

1. The first is whether the indictment is bad because the letters

set out in the indictment and alleged to be non-mailable do not in themselves show with certainty that the pictures therein referred to are either lewd, lascivious, or obscene?

This question was considered to some extent during the trial and has since been more carefully considered. The court decides the question in the negative. It holds that a letter is non-mailable if it in fact conveys and was intended to convey information to any person where obscene pictures or literature may be obtained even though to a casual reader it may seem harmless; the court further holds that in a prosecution of this character the Government is not confined to the letter itself, but may show by any competent extrinsic testimony that the letter gives information which the statute prohibits being given through the mail, and that it was in fact intended to convey such information. If the character of a letter cannot be thus shown by extrinsic facts the statute under which this indictment is drawn could be easily evaded and would prove a dead letter.

2. The next question is whether the indictment is bad because it is alleged that letters addressed to Herman Huntress and
17 Wm. W. Waters conveyed information and were intended to convey information to one Robert W. McAfee where lewd and obscene pictures could be obtained.

This question must also be decided in the negative, for the reason that it is not impossible or even improbable that a letter addressed to Huntress or Waters may have given and may have been intended to give information to a person whose real name was McAfee. The letters may have been addressed to a person under an assumed name, and the proof adduced at the taial showed that such was the fact. McAfee had written two letters to the defendant under assumed names, and in reply thereto had received the two letters counted upon in the indictment, the one addressed to Huntress and the other to Waters. It certainly cannot be maintained that the mailing of a letter containing information as to obscene pictures is not an offence because it is sent to a person under an assumed name. U. S. *vs.* Cottingham, 2 Blatch., 470.

3. The next inquiry is whether the act complained of—that is to say, the deposit of non-mailable letters in the mail—loses its criminal character because the letters were sent to a person in the service of the Post Office Department in response to an inquiry made by that person under an assumed name and for the purpose of detecting the defendant in the commission of a crime.

The question must be decided in the light of authority and without reference to the other question that has sometimes been discussed, whether a person is ever justified in resorting to artifice or deception for the purpose of discovering crime. In view of what seems to be the weight of authority at the present time, the court is compelled to decide the question last stated in the negative.

If a letter gives information where obscene books or pictures can be obtained, it is an offence to deposit such a letter in the mail with

intent to give such information and thereby to aid in the
18 sale and distribution of such books and pictures, even though the party addressed happens to be an official in the service of the Government; and if such act is done voluntarily and intentionally—that is to say, if the non-mailable letter is deposited in the mail by the accused without solicitation on the part of the officer that the mail be used to convey such intelligence—the weight of judicial opinion seems to be that the act does not lose its criminal character, though the offense may have been committed in responding to an inquiry from a person in the Government service which was made under an assumed name for the purpose of concealing his identity.

Bates *vs.* U. S., 10 Fed. Rep., 92, 100.
U. S. *vs.* Bott, 11 Blatchford, 346.
People *vs.* Noelke, 94 N. Y., 137, 142.
Excise Com. *vs.* Backus, 29 How. Prac. Rep., 33, 39, 42.
U. S. *vs.* Moore, 19 Fed. Rep., 39.
U. S. *vs.* Wight, 38 Fed. Rep., 106, 109, 111.
U. S. *vs.* Dorsey, 40 Fed. Rep., 752.
U. S. *vs.* Whittier, 5 Dillon, 35, 39.
U. S. *vs.* Fove, 1 Curtis, 364.

It cannot be regarded as a valid excuse for a crime that some one has afforded the accused a convenient opportunity to commit it for the purpose of testing his honesty. Unfortunately it seems to be necessary to apply such tests in order to sup-ress offenses of a certain class.

In the case at bar the evidence did not show that the accused was solicited to commit the offense charged in the indictment. The selection of the public mail as the medium for giving information where the most lewd and indecent pictures could be obtained was the voluntary act of the defendant and he is criminally responsible therefor. The motions for a new trial and in arrest are therefore overruled.

19 And afterwards, to wit, at said regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in said cause on Saturday, the 18th day of June, A. D. 1892, to wit:

THE UNITED STATES, Plaintiff, *ag'st* WILLIAM GRIMM, Defendant.	)	No. 3406. Indictment for Violation of Sec. 2, p. 496, Vol. 25, United States Statutes at Large.

This day comes the United States, by district attorney, and the said defendant being present in court in compliance with the recognizance heretofore entered into by him in this cause, and also appearing by D. P. Dyer, Esquire, his attorney, on the application of the said defendant, by his said attorney, it is ordered that the execution of the judgment and sentence of the court heretofore entered in this cause be, and the same is hereby, now further suspended until Friday next, the 24th day of this present month of June.

And it is further ordered that the said defendant, William Grimm, be and appear at and before this court on Friday next, the 24th instant, and not depart from said court without leave thereof in obedience to the recognizance heretofore entered into by him in this cause.

And afterwards, to wit, at said regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in said cause on Friday, the 24th day of June, A. D. 1892, to wit:

THE UNITED STATES, Plaintiff, *ag'st* WILLIAM GRIMM, Defendant.	No. 3406. Indictment for Violation of Sec. 2, p. 496, Vol. 25, United States Statutes at Large.

This day comes the United States, by district attorney, and the said defendant being present in court in compliance with the recognizance heretofore entered into by him in this cause, and also appearing by D. P. Dyer, Esquire, his attorney, on the application of the said defendant, by his said attorney, it is ordered that
20 the execution of the judgment and sentence heretofore entered in this cause be, and the same is hereby, now further suspended until Monday next, the 27th day of this present month of June.

And it is further ordered that the said defendant be and appear at and before this court on Monday next and not depart from said court without leave thereof in obedience to the recognizance heretofore entered into by him in this cause.

And afterwards, to wit, at said regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in said cause on Saturday, the 25th day of June, A. D. 1892, to wit:

THE UNITED STATES, Plaintiff, *ag'st* WILLIAM GRIMM, Defendant.	No. 3406. Indictment for Violation of Sec. 2, p. 496, Vol. 25, United States Statutes at Large.

This day comes the United States, by district attorney, and also comes the said defendant, by D. P. Dyer, Esquire, his attorney; and the said defendant, by his said attorney, files and presents to the court his bill of exceptions in this cause, which said bill of exceptions is thereupon signed and sealed and ordered to be made part of the record in this cause.

And thereupon the said defendant, by his said attorney, files his assignment of errors in this cause.

And afterwards, to wit, at said regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in said cause on Saturday, the said 25th day of June, A. D. 1892, to wit:

THE UNITED STATES, Plaintiff, } No. 3406. Indictment for Violation
ag'st } of Sec. 2, p. 496, Vol. 25, United
WILLIAM GRIMM. } States Statutes at Large.

This day comes again the United States, by district attorney, and also comes the said defendant, by D. P. Dyer, Esquire, his attorney; and the said defendant, by his said attorney, presents
21 to the court a writ of error sued out of the Supreme Court of the United States, directed to this court in this cause, which said writ of error is signed by David J. Brewer, associate justice Supreme Court of the United States, in which writ the supersedeas bond is fixed at the sum of four thousand dollars, to be approved by the judge of this court.

And thereupon the said defendant, William Grimm, presents to the court his bond for appearance in the sum of four thousand dollars, with Julius Gross as surety, which bond is by said judge approved and ordered to operate as a supesedeas in said cause.

Said bond is in the words and figures following, to wit:

UNITED STATES OF AMERICA, } ss:
Eastern Division of the Eastern Judicial District of Missouri, }

Be it remembered that on the twenty-fifth day of June, A. D. 1892, before Amos M. Thayer, judge of the district court of the United States in and for the eastern district of Missouri, personally came William Grimm, as principal, and Julius Gross, as surety, and acknowledged themselves to owe to the United States of America the sum of four thousand dollars, to be made and levied of their goods and chattels, lands and tenements, and to the said United States of America rendered if default be made in the conditions following, to wit:

Whereas on the sixth day of June, A. D. 1891, and at the May term, A. D. 1891, of the district court of the United States in and for the eastern division of the eastern judicial district of Missouri the grand jurors of the United States, duly empaneled, sworn, and charged to enquire in and for said division of said district, at said term of said court duly found and returned into said court, wherein the same was duly filed, a true bill of indictment against said William Grimm for certain criminal of-enses against the United States,
to wit, for an offense committed under section 3893 of the
22 Revised Statutes of the United States as amended by act of Congress approved September 26th, 1888:

And whereas at the May term, A. D. 1892, of said court the said William Grimm, defendant in said indictment, was duly tried upon and under said indictment before a jury, and said jury returned a verdict of guilty against the said William Grimm, defendant, upon the second and fourth counts in said indictment;

And whereas such further proceedings were afterwards had that the said court, by its judgment under said indictment and verdict on the 21st day of May, A. D. 1892, and at said May term, A. D. 1892, of said district court, sentenced the said defendant, William Grimm, to imprisonment at hard labor in the penitentiary of the

State of Missouri, at Jefferson City, Missouri, for and during the term of one year and one day;

And whereas such further proceedings were had that the circuit justice of the eighth circuit of the said United States has allowed the said William Grimm a writ of error in said cause, returnable to the Supreme Court of the United States on the 23rd day of July, A. D. 1892, and has ordered that said writ of error shall operate as a stay of proceedings under said sentence if bail is given by the said defendant in the sum of four thousand dollars, with sufficient sureties to be approved by the U. S. district judge of the eastern district of Missouri:

Now, therefore, the condition of this recognizance is such that if the said defendant, William Grimm, shall personally be and appear at and before the said Supreme Court of the United States, at Washington, D. C., on the second Monday in the month of October, A. D. 1892, and from day to day and term to term thereafter, and not depart from said court without leave, and submit to and obey all orders that may be made by said Supreme Court in said cause, and if he shall further render himself in execution of the judgment and sentence heretofore imposed by the district court of the United States in and for the eastern division of the eastern
23 judicial district of Missouri at such time as said Supreme Court shall direct, if said judgment and sentence be affirmed, then this recognizance shall be void; otherwise to remain in full force and virtue.

In witness whereof the said obligors have hereunto signed their names and affixed their seals the day and year first above written.

WILLIAM GRIMM. [SEAL.]
JULIUS GROSS. [SEAL.]

Signed, sealed, and acknowledged by the said William Grimm and Julius Gross, the parties thereto, before me this twenty-fifth day of June, A. D. 1892, at my office, in the city of St. Louis, in eastern district of Missouri, and the same is by me hereby approved to take effect as a supersedeas.

AMOS M. THAYER,
U. S. District Judge.

Said bill of exceptions so filed as aforesaid is in the words and figures following, to wit:

24 UNITED STATES OF AMERICA, }
Eastern Division of the Eastern Judicial District of Missouri, } *ss:*

In the District Court of the United States in and for said Division of said District.

UNITED STATES, Plaintiff, }
vs. } No. 3406.
WILLIAM GRIMM, Defendant. }

Be it remembered that on the 6th day of June, A. D. 1891, there was filed in the district court of the United States in and for the

eastern division of the eastern judicial district of Missouri, by the grand jury thereof, an indictment against William Grimm, the defendant herein; which indictment is in the words and figures as follows:

Indictment.

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } ss:

In the District Court of the United States in and for said Division of said District, at the May Term Thereof, A. D. 1891.

The grand jurors of the United States, duly empaneled, sworn, and charged to inquire in and for the said division of said judicial district of Missouri, upon their oaths present—

That one William Grimm, late of said division of said district, heretofore, to wit, on the twenty-third day of the month of July, in the year of our Lord eighteen hundred and ninety, at said division of said district, did then and there unlawfully, feloniously, and knowingly deposit and cause to be deposited in the post office of the United States at St. Louis, Missouri, for mailing and delivery, a written and printed letter and notice giving information, directly and indirectly, to one Robert W. McAfee and divers other persons, whose names are to the jurors aforesaid unknown and for that reason cannot be herein stated, where, how, of whom, and by what means obscene, lewd, and lascivious pictures, papers, and
25 prints of an indecent character and intended and adapted for an indecent and immoral use might be obtained, which said letter and notice was then and there non-mailable matter and was then and there contained in an envelope and wrapper bearing and having thereon the address and superscription following, to wit, "Mr. Herman Huntress, car- of Bates house, Indianapolis, Ind.," contrary to the form of the statutes of the United States in such case made and provided and against its peace and dignity.

Second count. And the grand jurors aforesaid upon their oaths aforesaid do further present that afterwards, to wit, on the day and year aforesaid, at the division and district aforesaid, said William Grimm, late of said division of said district, then and there received a letter, addressed and delivered to him, of the following tenor:

"RICHMOND, IND., *July 21st*, 1890.

Mr. William Grimm, Saint Louis, Mo.

DEAR SIR: A friend of mine has just shown me some fancy photographs and advised me that they could be obtained from you. I am on the road all the time and I am sure many of them could be sold in the ter-itory over which I travel. How many different kinds can you furnish? Send me price-list showing your rates by the hundred and dozen. Address me at once at Indianapolis, Ind., care Bates house, and I will send you a trial order.

HERMAN HUNTRESS."

And the grand jurors aforesaid upon their oaths aforesaid do further present that on the day and year first aforesaid the said William Grimm then and there had in his possession and under his control a large number, to wit, eight hundred, obscene, lewd, and lascivious pictures, papers, and prints of an indecent character and intended and adapted for an indecent and immoral use, and that said William Grimm, in response to said letter, on the day and year first aforesaid, did then and there unlawfully, feloniously, and knowingly deposit and cause to be deposited in the post office of the United States at St. Louis, Missouri, for mailing and delivery, a written and
26 printed letter and notice giving information, directly and indirectly, to one Robert W. McAfee and divers other persons, whose names are to the jurors aforesaid unknown and for that reason cannot be herein stated, how, where, of whom, and by what means obscene, lewd, and lascivious pictures, papers, and prints of an indecent character and intended and adapted for an indecent and immoral use might be obtained, which said letter and notice was then and there non-mailable matter and was then and there contained in an envelope and wrapper bearing and having thereon the address and superscription following, to wit, "Mr. Herman Huntress, car- of Bates house, Indianapolis, Ind.," and which said letter and notice is of the following tenor:

"Wm. Grimm, photograph and art studio, N. E. cor. of Jefferson avenue and Olive street.

ST. LOUIS, *July* 22, 1890.

Mr. Huntress, Richmond.

DEAR SIR: I received your letter this morning. I will let you have them for $2.00 per doz. & $12.50 per 100. I have about 200 negatives of actresses.

Respectfully, WM. GRIMM."

And the grand jurors aforesaid upon their oaths aforesaid do further present that on the day and year first aforesaid the said William Grimm, when he so deposited and caused to be deposited said last-named letter and notice in said post office, unlawfully, feloniously, and knowingly meant and intended thereby to give notice and did thereby give notice and information to the writer of said first-named letter and to said McAfee and divers other persons, whose names are to the grand jurors aforesaid unknown, where, how, of whom, and by what means obscene, lewd, and lascivious pictures, papers, and prints of an indecent character and intended and adapted for an indecent and immoral use might be obtained, contrary to the form of the statutes of the United States in such case made and provided and against its peace and dignity.

Third count. And the grand jurors aforesaid upon their oaths aforesaid do further present that afterwards, to wit, on the
27 twenty-first day of the month of July, in the year of our Lord eighteen hundred and ninety, at said division of said district, the said William Grimm, late of said division of said

district, did then and there unlawfully, feloniously, and knowingly deposit and cause to be deposited in the post office of the United States at St. Louis, Missouri, for mailing and delivery, a written and printed letter and notice giving information, directly and indirectly, to one Robert W. McAfee and divers other persons, whose names are to the jurors aforesaid unknown and for that reason cannot be herein stated, where, how, of whom, and by what means obscene, lewd, and lascivious pictures, papers, and prints of an indecent character and intended and adapted for an indecent and immoral use might be obtained, which said letter and notice was then and there non-mailable matter and was then and there contained in an envelope and wrapper bearing and having thereon the address and superscription following, to wit, "Mr. Wm. Waters, care W. S. Campbell & Co., Clarksville, Texas," contrary to the form of the statutes of the United States in such case made and provided and against its peace and dignity.

Fourth count. And the grand jurors aforesaid upon their oaths aforesaid do further present that afterwards, to wit, on the day and year last aforesaid, at the division and district aforesaid, said William Grimm, late of said division of said district, then and there received a letter, addressed and delivered to him, of the following tenor:

"CLARKSVILLE, TEXAS, *July 19th*, '90.

Wm. Grimm, Esq., St. Louis, Mo.

SIR: A gentleman has shown me some of your fance photographs. Will you please advise me how many subjects you have and your price per dozen and per 100 lots. I have no doubt they will sell well. Address—

WM. W. WATERS,
Care W. S. Campbell & Co., Clarksville, Texas."

And the grand jurors aforesaid upon their oaths aforesaid do further present that on the day and year last aforesaid the said William Grimm then and there had in his possession and under his control a large number, to wit, eight hundred, obscene, lewd,
28 and lascivious pictures, papers, and prints of an indecent character and intended and adapted for an indecent and immoral use, and that said William Grimm, in response to said letter, on the day and year last aforesaid did then and there unlawfully, feloniously, and knowingly deposit and cause to be deposited in the post office of the United States at St. Louis, Missouri, for mailing and delivery, a written and printed letter and notice giving information, directly and indirectly, to one Robert W. McAfee and divers other persons, whose names are to the jurors aforesaid unknown and for that reason cannot be herein stated, how, where, of whom, and by what means obscene, lewd, and lascivious pictures, papers, and prints of an indecent character and intended and adapted for an indecent and immoral use might be obtained, which said letter and notice was then and there non-mailable matter and was then and there contained in an envelope and wrapper bearing and having thereon the address and superscription following, to wit, "Mr. Wm. Waters, care

W. S. Campbell & Co., Clarksville, Texas," and which said letter and notice is of the following tenor:

"Wm. Grimm, photograph and art studio, N. E. cor. of Jefferson avenue and Olive street.

ST. LOUIS, *July* 21, 1890.

Mr. Wm. Waters:

Yours at hand the 21st. I will make them for $2.00 per doz. and $12.50 per 100. Address—

WM. GRIMM,
N. E. Cor. Olivee and Jefferson, St. Louis, Mo.

P. S.—Different sisses."

And the grand jurors aforesaid upon their oaths aforesaid do further present that on the day and year last aforesaid the said William Grimm, when he so deposited and caused to be deposited said last-named letter and notice in said post office, unlawfully, feloniously, and knowingly meant and intended thereby to give notice and did thereby give notice and information to the writer of said first-named letter and to said McAfee and divers other persons, whose names are to the grand jurors aforesaid unknown, where, how, of whom, and by what means obscene, lewd, and lascivious pictures, papers, and prints of an indecent character and intended for an indecent and immoral use might be obtained, con-
29 trary to the form of the statutes of the United States in such case made and provided and against its peace and dignity.

GEO. D. REYNOLDS,
United States Attorney, Eastern District of Missouri.

That defendant duly appeared and gave bond for his appearance herein.

That on the 5th day of May, A. D. 1892, defendant filed a demurrer to the indictment herein, which was by the court overruled; to which action of the court the defendant then and there duly excepted at the time.

The demurrer of the defendant is in words and figures as follows:

Demurrer.

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } *ss:*

In the District Court of the United States in and for said Division of said District.

UNITED STATES }
vs.
WILLIAM GRIMM, Defendant. }

Now comes William Grimm, defendant herein, and demurs to and moves to quash the first count of the indictment herein for the following reasons, to wit:

First. That it does not individuate any offence.

Second. That the allegations in said count contained are vague, indefinate, and uncertain, and are not sufficient to and do not constitute an offence or statement of a cause of action against him.

Third. That under a letter mailed and addressed to "Mr. Herman Huntress, care of Bates house, Indianapolis, Ind.," *on* information of any kind through the United States mail was or could be given to Robert W. McAfee and divers other persons, *and* &c., it not being alleged that Robert W. McAfee and Herman Huntress are one and the same person or that that person is as well known by the one name as the other.

Fourth. That the alleged letter therein alluded to is not set forth either in full or in substance.

Defendant further demurs to and moves to quash the second count of the indictment herein for the following reasons, to wit:

30 First. That it does not individuate any offence.

Second. That the allegations in said count contained are vague, indefinite, and uncertain, and are not sufficient to and do not constitute an offence or statement of a cause of action against him.

Third. That under a letter mailed and addressed to "Mr. Herman Huntress, care of Bates house, Indianapolis, Ind.," no information of any kind through the United States mail was or could be given to Robert W. McAfee and divers other persons, &c., it not being alleged that Robert W. McAfee and Herman Huntress are one and the same person or that that person is as well known by the one name as the other.

Fourth. That defendant's alleged letter therein described as addressed to Herman Huntress on its face gave or gives no information of a prohibited character, nor, taken in combination with the alleged letter of the alleged Herman Huntress to defendant, does it give any such alleged prohibited information.

Fifth. That the letters to and from defendant as therein alleged do not pretend nor can they be so understood or the terms therein contained be enlarged by construction to mean that there could or would be furnished by defendant or any one else and "obscene, lewd, and lascivious pictures, papers, and prints of an indecent character and intended and adapted for an indecent and immoral use."

Sixth. That the allegations therein contained are inconsistent and repugnant to one another.

Defendant further demurs to and moves to quash the third count of the indictment herein for the following reasons, to wit:

First. That it does not individuate any offense.

Second. That the allegations in said count contained are vague, indefinite, and uncertain, and are not sufficient to and do not constitute an offense or statement of a cause of action against him.

Third. That under a letter mailed and addressed to "Mr. Wm. Waters, care W. S. Campbell & Co., Clarksville, Texas," no

31 information of any kind through the United States mail was

or could be given to Robert W. McAfee and divers other persons, &c., it not being alleged that Robert W. McAfee and Wm. Waters are one and the same person or that that person is as well known by the one name as the other.

Fourth. That the alleged letter therein alluded to is not set forth either in full or in substance.

Defendant further demurs to and moves to quash the fourth count of the indictment herein for the following reasons, to wit:

First. That it does not individuate any offense.

Second. That the allegations in said count contained are vague, indefinite, and uncertain, and are not sufficient to and do not constitute an offense or statement of a cause of action against him.

Third. That under a letter mailed and addressed to "Mr. Wm. Waters, care W. S. Campbell & Co., Clarksville, Texas," no information of any kind through the United States mail was or could be given to Robert W. McAfee and divers other persons, &c., it not being alleged that Robert W. McAfee and Wm. Waters are one and the same person or that that person is as well known by the one name as the other.

Fourth. That defendant's alleged letter therein described as addressed to "Mr. Wm. Waters, care W. S. Campbell & Co., Clarksville, Texas," on its face gave or gives no information of a prohibited character, nor, taken in combination with the alleged letter of the alleged Wm. Waters to defendant, does it give any such alleged prohibited information.

Fifth. That the letters to and from defendant as therein alleged do not pretend nor can they be so understood or the terms therein contained be enlarged by construction to mean that there could or would be furnished by defendant or any one else any "obscene, lewd, and lascivious pictures, papers, and prints of an indecent character and intended and adapted for an indecent and immoral use."

Sixth. That the allegations therein contained are inconsistent and repugnant to one another.

By LOUIS A. STEBER,
Attorney for Defendant.

32 That immediately after overruling said demurrer as aforesaid the cause came on for hearing in said honorable court as aforesaid before the Honorable Amos M. Thayer, judge of said court, and a jury, when the following proceedings were had, to wit:

By consent of counsel formal arraignment and reading of the indictment was waived and a plea of not guilty entered on behalf of the defendant.

Appearances: For plaintiff, Mr. Geo. D. Reynolds, U. S. attorney; for defendant, Mr. D. P. Dyer and Mr. Louis A. Steber, the defendant being personally present in court during all the proceedings.

The plaintiff, to sustain the issues on its part, introduced evidence as follows:

R. W. McAFEE, being duly sworn on the part of plaintiff, testifies as follows:

Direct examination by Mr. District Attorney REYNOLDS:

Q. What is your name?

(Defendant objects to the introduction of any testimony under the indictment on the ground that there is no offence charged therein of which the Federal statutes can take notice.

Objection overruled; to which action and ruling of the court the defendant then and there duly excepted at the time.)

Q. What is your name?

A. Robert W. McAfee.

Q. Where do you live?

A. My residence is in Carlinville, Illinois.

Q. What is your occupation and business or employment?

A. Post-office inspector; also agent of the Western Society for the Suppression of Vice.

Q. That is the society of which Mr. Comstock is president?

A. No, sir; that has no connection with Mr. Comstock whatever.

Q. A branch of it?

A. No, sir; entirely independent.

Q. Where are its headquarters?

33 A. Cincinnati, one headquarters; St. Louis and Chicago

Q. How long have you been engaged in business as the agent of the Western Branch of the Suppression of Vice, Mr. McAfee?

A. About fifteen years; a little more.

Q. What do you do in connection with that?

A. I investigate all complaints of the violation of the postal law—of that postal law.

Q. The postal law that has been read here?

A. Yes; that is what I am commissioned for.

Q. You say you are also commissioned as United States post-office inspector?

A. I am, sir.

Q. For how long have you held that commission?

A. About nine years, I think.

Q. That is, for the purpose of——

Mr. DYER: It don't make any difference what purpose. I object to it for any purpose.

Mr. REYNOLDS: The effect of that is to give you an official position under the United States?

Objected to by defendant. Objection sustained.

Q. Do you know the defendant Grimm?

A. Yes, sir; I saw him first on the 7th day of August, 1890.

Q. Under what circumstances did you meet or make his acquaintance and what took place between you?

Mr. DYER: I object to that.

The COURT: What day was it, you say?

A. I think it was the 7th day of August.

The COURT: I will overrule the objection.

Mr. REYNOLDS: What year?

A. 1890.

Q. At what place?

A. It was on the street somewhere in the southern part of this city.

34 Q. Go on and state the circumstances and what took place between you.

A. I was with Deputy Marshall Ekles, who had a warrant for Grimm's arrest, and we met him and Mr. Ekles told him that he had the warrant, and we then came up to his office to his gallery.

Q. Where was that gallery?

A. It was on Olive street, I think, at the corner of Jefferson, in this city.

Q. What kind of a gallery was it?

A. Photographic gallery.

Q. What took place?

A. When we got into the gallery—I hadn't said anything to Grimm up to that time, particularly, and I told him who I was.

Q. Just state what you said.

A. I told him I was a post-office inspector and that I had been investigating this complaint against him.

Q. What complaint?

A. Of mailing notices of where indecent pictures could be obtained, and that I would like to get the negatives from which they were taken. "Well," he says, "I haven't got the negatives now." I says, "What have you done with them?" He says, "I have destroyed them." I says, "When did you destroy them?" "O, some time ago; probably ten days ago." I asked him how he had destroyed them.

Mr. DYER: I object to this conversation that was going on there. We are here for the purpose of finding out whether he mailed letters or not. It makes no difference what he had in his possession. It can't possibly cut any figure here what took place in reference to the destruction of negatives.

The COURT: Well, I think differently. I think it may throw some light upon the question what information those letters conveyed. It is only admissible, of course, for that purpose.

To which ruling of the court the defendant then and there duly excepted at the time.

35 A. He said he had taken a hatchet and mashed them up. I asked them if he had none of those pictures in his possession.

Mr. REYNOLDS: Did you show him the picture you were referring to?

—. No, sir; I did not. He says, The only pictures I have are some that was left in my possession this morning. I says, "Let's

have them." He went to his secretary and lifted up the lid and took an envelope out of his pig-on-hole and handed this package to me.

Q. What is in it?

A. And told me they had been left there that morning by a gentleman whose name he did not know, to be enlarged. It contained one cabinet picture and six plates of small pictures known as order sheets.

Q. Is the envelope in which those are contained *are* marked?

A. I marked it at that time.

Q. How is it marked?

A. Simply what he said—"Left this morning; don't know by who-; left to be enlarged, etc."

Q. How many sheets of photographs are contained in that envelope?

A. There is six little sheets with fifty pictures on a sheet; I think fifty—no, twenty-five on a sheet.

Q. Twenty-five pictures on a sheet and one cabinet?

A. Yes, sir.

Q. The cards referred to are in envelope marked——

A. Just mark them all, if you like. Mark them A?

The COURT: You can mark them with numbers.

A. Well, this, then, is number 1.

Mr. REYNOLDS: Then mark the envelope number 1 and the photographs 1*a*, 1*b*, 1*c*, 1*d*, 1*e*, 1*f*, and 1*g*. The envelope is marked No. 1 and the papers inside of it 1*a* to 1*g*, inclusive. Well, what else took place?

A. I then referred again to the negatives. I said, Mr. Grimm, I want those negatives and I have these officers here with me, and if you will give them up to me I would like to have them; but
36 if not, I have arranged for a search warrant for this place in order to get them. Well, he says, "I haven't got them; they are not here. You can search the place if you want to; they are not here." I asked the officer who was with me to step down to a laundry which is two doors from this place—one or two doors—and bring up a trunk that Mr. Grimm had left there. He departed, and in a moment came back with a lady in charge and said that she would not give it up unless Mr. Grimm said so. I said, "Mr. Grimm, is that your trunk down there?" He says, "Yes, sir." I says, "What is in it?" He says, "Oh, I guess you know." He says, "Those negatives are in it." I says, "Shall we go down and get them?" He said, "Yes." We all went down to the laundry office and got the trunk—that trunk over there (indicating). He says, "The key is up in the office." Well, I says, "Will you go get it." He says, "No; just bring it up in the gallery;" and the officers took it up in the gallery and opened it and marked some of the contents, and he turned them over to us. In the meantime, or just after that——

Q. I understand you to say that that is the trunk out there?

A. Yes.

Q. Just bring it forward.

A. (Trunk produced by witness.) I then stepped to the secretary at which his daughter was sitting—he had told me she was his daughter. I said to her, "Is this your handwriting upon this envelope?" She says, "It is." I said, "Did you do that for yourself or for somebody else"? Mr. Grimm spoke up and says, "She did it for me. She don't know anything about this business," or "I had her to do that, and she knows nothing about it."

Q. You are referring now to which envelope?

A. Addressed to "William Waters, care W. S. Campbell & Co., Clarksville, Texas:" the contents and all I showed her—the contents and all of it.

Mr. REYNOLDS: That might as well be read now in connection with his testimony.

37 Mr. DYER: When you get through with him I want the privilege of cross-examining him.

The COURT: Just let him identify the letter and you needn't read it until after he is cross-examined.

The WITNESS: It is already identified with my marks.

Mr. REYNOLDS: How is it marked?

The COURT: Mark it Exhibit No. 2.

The WITNESS: Exhibit No. 2 and the contents Exhibit No. 2*a*, I will put it.

Mr. REYNOLDS: Now, Mr. McAfee, was that letter an answer to anything—no; wait before I get to that.

A. I also while there at the secretary looked over his book.

Q. We can't hear with that pen in your mouth.

A. While at his secretary his order book was lying open, and on the 28th—for the 28th day of July there was a memorandum.

Mr. DYER: If you have got a memorandum bring it here. We don't want your recollection of a memorandum.

A. I know what it is, sir; I saw the book.

Mr. DYER: I object to his statement of the contents of it.

Mr. REYNOLDS: The book is in their possession.

The WITNESS: The book was lying on his secretary. We were looking over it together.

Q. Did you have any conversation with him as to the entry that you saw in the book?

A. I asked about it; yes, sir.

Q. What did you ask him about that entry in the book?

A. I called his attention to the entry there.

Q. Well, what was it that you called his attention to?

A. To the entry.

Q. What was it?

A. To there being an entry in the same name as this letter.

Q. What name was that?

38 A. William Waters.

Q. Of what—entry of what?

A. Of photographs, 82.

Q. Well, what conversation did you have with him in regard to that entry?

A. That was all; just simply called his attention to that entry being there.

Q. What did he say about it?

A. Well, I don't remember that he said anything. I don't remember just what he did say particularly.

Q. Well, go on now. What else took place between you?

A. Well, we then came down to the office—got in the carriage and came down to the office with the trunk.

Q. Did you have any conversation with him in reference to the letter?

A. No, sir; I did not. I didn't have that with me.

Q. Sir?

A. I didn't have that with me and said nothing to him about it.

Q. The Waters letter?

A. The Waters letter I had with me; the other I did not.

Q. Now did you have any conversation with him in regard to the Huntress letter?

A. I did not; no, sir. I didn't have that with me, and had no conversation that I remember now.

Q. Go on. Was that all the conversation?

A. I don't recall anything just at present in reference to it.

Q. What, if anything, did you do in reference to the trunk?

A. I brought it to the office and locked it up, and on the following morning Mr. Dice and I made an inventory of it and sealed it up.

Q. Has it been opened since?

A. No, sir.

Mr. DYER: I object to that. If you are through with this
39 line of the examination about these letters, I want to take him.

Mr. REYNOLDS: I am not through with my direct examination, but I am through with him as to the letters.

Mr. DYER: I would like to have him take a seat and let me cross-examine him. Will you give me those letters that are set out in the indictment?

Mr. REYNOLDS: Mr. McAfee has all of them there.

A. This is the one that has been spoken of.

Mr. DYER: Now, give me the other one. I am talking about those that are in the indictment.

A. Well, I don't know; I have not had the indictment.

Mr. REYNOLDS: You have heard it read?

A. Partly.

Mr. DYER: These are the letters addressed William Waters and Herman Huntress, Bates house, Indianapolis. You offer these in support of your indictment?

Mr. REYNOLDS: Yes, sir; that is my understanding.

Mr. DYER: When were you appointed post-office inspector?

A. I don't remember the exact date, but about nine years ago.

Q. Were you in 1890?

A. A post-office inspector?

Q. A post-office inspector.

A. Yes, sir.

Q. Bearing a commission from the Government of the United States?

A. Yes.

Q. State when this letter came into your possession, this letter addressed to William Waters, care W. S. Campbell & Co., Clarksville, Texas.

A. I don't remember the exact date, sir.

Q. Have you got a letter of William Waters written at this date?

A. He has it there.

Q. Have you got a letter of William Waters written at this date in your possession or a copy of it?

40 A. I have a copy of the letter that I wrote asking for response to be sent to this address.

Q. Do you know of any such person as William Waters in Texas?

A. I don't believe I know of any one in Texas at all, in that part of the State.

Q. Where did you mail the letter? Did you write a letter and sign William Waters' name to it?

A. I wrote a letter, asking that the reply be sent to William Waters, at this address.

Q. Have you got a copy of those letters?

A. I have; yes, sir.

Q. Well, produce them.

A. Yes, sir; it is addressed to William W. Waters.

Q. Now have you got the letter addressed to him signed Herman Huntress?

A. I have; yes, sir.

Q. Give me both of them. I will read these two letters. You will admit they are the letters set out in the indictment?

Q. Yes; I hav'n't looked at them, but I assume you wouldn't read any others.

Mr. DYER: I will read those letters.

"CLARKSVILLE, TEXAS, *July 19th*, '90.

William Grimm, Esq., St. Louis, Mo.

SIR: A gentleman has shown me some of your fancy photographs. Will you please advise me how many subjects you have and your prices per dozen and per 100 lots. I have no doubt they will sell well.

Address—

WILLIAM W. WATERS,
Care W. S. Campbell & Co., Clarksville, Texas.

Did you write the letter that was mailed, the original of which this is a copy, to this defendant?

A. I did, sir.

Q. Were you post-office inspector at that time?

A. I was.

Q. Where did you mail the letter?

41 A. I gave the letter to the carrier for delivery to Mr. Grimm.

Q. How was it postmarked; and, if it was postmarked Clarksville, Texas, how was that obtained? If you have got the envelope, produce it.

A. I have never seen the envelope since I gave it to the carrier that morning.

Q. I will get you to state where you gave it to the carrier.

A. I gave it to the carrier in the St. Louis post office.

Q. What was in the letter at the time, if you know—on the back of the letter; was it sealed? I will ask you whether it was sealed.

A. It was sealed; yes, sir.

Q. Well, sir, what was on it?

A. Well, I have depended on my memorandum in reference to that. If you will let me have the letter, I will tell you exactly what was on it.

Q. Well, sir.

A. This is a copy of a letter which was put in an envelope postmarked Clarksville, Texas, July 19th; addressed to William Grimm, Esq., photographer, Jefferson and Olive streets, St. Louis, Mo., and given to the carrier for delivery on July 21st, 1890.

Q. Now, I will get you to stste how that letter—if you gave that letter to the letter-carrier in the city of St. Louis and you say it was postmarked Clarksville, Texas, state how it became postmarked Clarksville, Texas, if it was in your hands.

A. It became postmarked by us having sent to the post office at Clarksville, Texas, and having it postmarked, having the envelope postmarked and mailed to our office under an official cover.

Q. When you sent it to Clarksville, Texas, for the purpose of having the post-office stamp Clarksville, Texas, put on it, was there any direction on the letter, the address?

A. There was not. It was done, I presume, some three or four years before that.

42 Q. Then you had in your hands at that time an envelope without any direction on it, but postmarked Clarksville, Texas?

A. Yes, sir; without the date in it.

Q. Did you insert the date?

A. I did, sir.

Q. How did you insert the date in the postmark?

A. With the postmarking dates.

Q. Postmarking dates?

A. Yes, sir.

Q. And you did that how many days after it was postmarked in Texas?

A. I did it on the day that I done it. I don't know just when I

sent that to the postmaster; I think some time ago, or some years ago.

Q. You have got the answer to that?

A. I have the answer to that here.

Q. When did you receive that letter?

A. I don't remember just the date I got it. I see I hav'n't marked the date on the memorandum. It was returned to me by the postmaster in due course of mail.

Q. From where?

A. From Clarksville, Texas.

Q. Was that letter opened by any one before it came to your hands?

A. Not that I could discover, sir.

Q. You wrote to the postmaster at Clarksville, Texas, that if a letter came addressed to William Waters to return it to you?

A. Yes, sir.

Q. In response to that this letter was returned to you?

A. Yes, sir.

Q. You opened it?

A. Yes, sir.

Q. And your letter that was written to which this was a response was written by you for the purpose of getting this information, wasn't it?

43 A. For the purpose of investigating that case.

Q. Did anybody else get this information before you?

A. Not to my knowledge; I don't know.

Q. Have you got that letter written by Mr. Grimm to William Waters? You opened that letter, didn't you?

A. I did, sir, and answered it.

Q. You opened this letter and answered it?

A. Yes, sir.

Q. Then, as far as William Waters is concerned, there is no such person as William Waters to your knowledge, and William Waters never got any letter and opened it from this man, from this defendant, to your knowledge?

A. Not to my knowledge; no, sir.

Q. Now, look at this letter addressed to William Grimm and signed Herman Huntress and state whether it is a copy of a letter that was written by you.

A. Yes, sir; this is a copy of a letter that I wrote.

Q. Where did you mail that?

A. I gave that to the carrier also in St. Louis post office for delivery after being back-stamped.

Q. Now, I will read that letter. This is a letter that is set out in this indictment: "Upson, Pruden & Co., 159, 161, and 163, Richmond, Ind., July 21st, 1890." Where did you get the letter-head upon which this seems to be copied?

A. I got it from Mr. Pruden, of Upson, Pruden & Co.; have them in my possession for purpose of official investigation.

Q. That is, you were using the letter-heads of this firm for the purpose of writing this letter on?

A. I was, sir.

Q. Now, when you wrote this letter:

"ST. LOUIS, Mo.

Mr. Grimm.

DEAR SIR: A friend of mine has just showed me some fancy photographs and advised me that they could be obtained from you. I am on the road all the time, and I am sure many of
44 them could be sold in the territory over which I travel. How many different kinds can you furnish? Send me price-list showing your rates by the 100 and dozen. Address me at once at Indianapolis, Ind., care Bates house, and I will send you trial order.

HERMAN HUNTRESS."

You wrote the original of that letter?

A. I did, sir; that is a copy of the letter I wrote.

Q. State where that was mailed, if mailed at all, or delivered to a carrier.

A. That I took down to the Pittsburgh and St. Louis railroad post office west, division A, which passes through Indiana, and caused it to be post-marked.

Q. Where?

A. I think it was on the bridge—as we came over the bridge; retained the letter in my possession, brought it to the St. Louis post office, post-marked it, back-stamped it, and gave it to the carrier on the 22nd day of July for delivery to Mr. Grimm.

Q. Then, in answer to that you got this, did you?

A. In answer to that I received this through the superintendent of carriers at the Indianapolis post office.

Q. Did you write over to the post office at Indianapolis to send you the letter addressed to William Huntress?

A. Anything that came addressed as this to forward to me under official cover?

Q. They did that?

A. Yes, sir.

Q. Was it sealed when you received it?

A. It was.

Q. And you opened it, did you?

A. I did. I hav'n't seen the contents.

Mr. DYER: The point is to offer both of them—all of them. This is the answer which is included in one of these counts:

"William Grimm, photograph and art studio.

Mr. Huntress, Richmond.

DEAR SIR: I received your letter this morning. I will let
45 you have them for $2.00 per doz. and $12.50 per 100. I have about 200 negatives of actresses.

Respectfully, WILLIAM GRIMM."

Q. Where did you receive that?

A. I received it in our office, room 232, custom-house.

Q. Do you know any such person as Herman Huntress?
A. I am not acquainted with him.
Q. You signed Herman Huntress' name to that letter?
A. I signed that letter there just as it is.
Q. Well, you signed Herman Huntress and the letter was written as you directed?
A. Where I asked it to be directed; yes, sir.
Q. And you received the answer?
A. I did.
Q. And at the time and during all of the time you were an officer of the Government of the United States?
A. Yes, sir; and answered it.
Q. Here is the letter to Waters:

"William Grimm, photograph and art studio, N. E. cor. of Jefferson avenue and Olive street.

ST. LOUIS, *July* 21, 1890.

Mr. William Waters:

Yours at hand the 21st. I will make them for $2.00 per dozen and $12.50 per 100. Address—

WILLIAM GRIMM,
N. E. cor. Olive and Jefferson, St. Louis, Mo.

P. S.—Different sizes."

Mr. REYNOLDS: I understand that you admit those signed by Wm. Grimm were written by Grimm and I admit those signed Huntress & Waters were written by McAfee, and that they are the four letters referred to in the indictment.

Mr. DYER: They are the four letters referred to in the indictment and the two letters were written by McAfee and the two letters in answer to them were written by this defendant. So that this is the correspondence.

Mr. REYNOLDS: After you received those two letters from Mr. Grimm, taking up the Waters letters—which was first in point of time, Waters or Huntress?

46 A. Waters, I think, was first, one or two days.

Mr. DYER: This being the case made upon this testimony and those being the only two letters that are contained in this information of letters sent by an agent of the Government, no such persons as Huntress or Waters being proven by the Government and nothing hinted of any information being given except the information given in those two letters, then I say that the Government of the United States, under well-settled principles of the law in this country, cannot convict a defendant of a violation of the law when the agent of that Government himself induced the commission of the offense.

Mr. REYNOLDS: Let us agree on this one matter. I suppose it is admitted, for the sake of this point—it must be to make the point—that the two letters referred to, directed in the name of Waters and

in the name of Huntress, one going to Clarksville, Texas, and the other going to Indianapolis, Indiana, went by due course of mail.

Mr. DYER: The indications from the post-office mark are that they were deposited in the mail; that one of them went to Clarksville, Texas, and the other to Indianapolis, and that under the direction of this Government officer they were returned to him and were unopened until he opened them. Now, I ask upon the testimony of this witness that, it being conceded by the district attorney that that is all the evidence in reference to any information that was given and the mode of giving the information, that the court now direct the jury to acquit this defendant.

The COURT: Is the Government through with its case?

Mr. REYNOLDS: No, sir.

The COURT: This is irregular. I can't entertain any such motion as that until the Government is through with its case.

Mr. REYNOLDS: I am going to follow this up and show what those letters did give information of. That is only part of my case.

47 Mr. DYER: We are charged here with mailing two letters. I object in the first place to any pictures being shown, because they are not described in the indictment.

The COURT: They are not offered yet.

Mr. REYNOLDS (previous question having been read): What occurred?

A. I answered the letter on the 28th day of July. I hold in my hand a copy of my answer.

Q. What is it?

Mr. STEBER: We object to that as not stated in the indictment. They can't bring in evidence that is not pleaded or referred to in the indictment. It don't make any difference what was done afterwards.

Mr. DYER: Do you want me to concede that those photographs are lewd and obscene? I am perfectly willing to concede that.

Mr. REYNOLDS: And that they were sent by express under the direction of William Waters and of Huntress.

The COURT: I don't see what it has to do with the case.

Mr. REYNOLDS: Did you order any photographs or pictures of the defendant?

A. I did.

Mr. DYER: I object to that.

The COURT: I don't think that question is proper. He isn't indicted for sending pictures or for selling. He is indicted for depositing a letter containing information where they could be obtained.

Mr. REYNOLDS: I claim that that letter that he wrote to McAfee under the name of Waters, giving him his price-list and saying that he had them, is the information as to where they could be obtained. Now, I propose to follow that up by this witness and other witnesses that I have here to show that following out that information which came through the post office Mr. McAfee applied for

photographs, and that while he was asking not for any inde-
48 cent photographs or anything of that kind he received under the order that he sent in there in compliance with the price-list given him the most indecent figures that were ever printed, and that this defendant sent them to him by express. That is my case. They didn't go by mail. He knew better than to do that. The law doesn't say they must be sent by mail. The law says information by mail as to where, how, and by what means or at what place they may be obtained.

The COURT: You propose to show, as I understand, that after the receipt of the first letter that has been read making inquiries and the letter in reply giving prices that the witness subsequently to that ordered pictures from the defendant and received pictures of an indecent character?

Mr. REYNOLDS: Yes; and that those pictures are in violation of the law. We contended that by doing that we thereby show what the object of the defendant was, the intent of the defendant in giving the price-list, as to the kind of pictures that were to be sent.

(Recess until 2 p. m.)

The COURT: The question was raised as court adjourned, whether the Government having offered in evidence the letters that are alleged to have contained the prohibited information and having charged in the indictment that the letters did give the prohibited information is now entitled to show that after the letters were received by the witness containing the price-list, the witness thereupon sent an order for pictures and in return received a lot of indecent pictures; that I understand to be the question to which objection is made. The offense under this statute consists in depositing a letter in the mail which gives information where lewd, lascivious, or obscene pictures may be obtained. The statute declars that the deposit of a letter in the mail that gives such information directly or indirectly is an offense. Now, to establish an offense under that section it is manifest that it is not necessary for
the Government to produce a letter that is so worded
49 that it would convey to every casual reader the prohibited information. It is sufficient under this statute if the Government shows that the letter complained of did in fact convey the prohibited information, and that it was intended to convey such information. A letter might be so worded that to a casual reader it would be perfectly harmless and would convey no information of the prohibited kind, and yet, by reason of certain extrinsic facts known to the sender of the letter and known to the person who received it and known to both of them, it might convey the identical information that this statute prohibits. Therefore, it is perfectly proper in my judgment to allow the Government, it having alleged that these letters conveyed certain species of information, to prove any fact or any state of facts that tends to support that allegation or to convince the jury that the letter did in point of fact convey certain information which the statutes prohibits. Therefore I shall permit the Government in this case to show by the witness,

if it can, that after the receipt of the price-list certain pictures were ordered, and I shall also allow it to show the character of those pictures unless the character of the pictures is an admitted fact.

(To which action and ruling of the court the defendant then and there duly excepted at the time.)

Mr. REYNOLDS: Well, what did you do, Mr. McAfee, when you got these two letters?

A. In response to the notice received in the Texas case I wrote the following letter—in response to the Clarksville, Texas, case I wrote the following letter.

Mr. DYER: Now we object to that.

The WITNESS: Of which this is a copy.

The COURT: I will permit him to testify to the contents of any letter that he may have deposited in the mail duly addressed to the defendant.

(To which action and ruling of the court the defendant
50 then and there duly excepted at the time.)

A. I addressed this letter to William Grimm, northeast corner of Jefferson avenue and Olive, St. Louis, Mo., and gave it to the carrier for delivery at that place—to the letter carrier for delivery.

Mr. DYER: I object to that on the ground that it was not deposited in the mail and was not such a delivery as was contemplated by law.

The COURT: I will let you read the contents.

(To which action and ruling of the court the defendant then and there duly excepted at the time.)

A. "CLARKSVILLE, TEXAS, *July 26th*, 1890.

Mr. William Grimm, St. Louis, Mo.

SIR: Your letter received. Send me one dozen samples for the $2.00 herewith. If they are satisfactory you will hear from me right away. I want the fancy kind, the best you have. Address—

WILLIAM W. WATERS,
Care W. S. Campbell & Co., Clarksville, Texas.

Mr. REYNOLDS: What did you get in reply to that, if anything?

A. I received in reply to that this package (indicating package).

Q. What is it?

A. Package addressed to Mr. William Waters, care W. S. Campbell & Co., Clarksville, Texas.

Q. What is it? Have you opened it?

A. I have, sir.

Q. Did it come to you sealed up? Had it been opened?

A. It was not sealed. No, sir; I don't think it had been opened; it was tied securely.

Q. It came by express?

A. It came back by mail to me from the postmaster at Clarksville, Texas, under official cover.

Q. What was in it?

Mr. DYER: I object now to any further introduction of
51 testimony in reference to that matter on the ground that this package does not seem to have been sealed and marked, and came to him under cover from the postmaster at Clarksville, Texas, when it had been originally sent by express.

Mr. REYNOLDS: I have the postmaster here from Clarksville, Texas.

The COURT: It is a mere question of the order of proof. I will overrule the objection.

A. It showed no signs of having been opened and was opened in the presence of the chief clerk of the post-office inspector's office by me, and contains this batch of pictures.

Mr. REYNOLDS: I offer them.

Mr. DYER: We object to them as being incompetent, irrelevant, and immaterial to the issue in this case.

The COURT: The objection is overruled.

(To which action and ruling of the court the defendant then and there duly excepted at the time.)

Mr. DYER: Then we with that exception saved admit that those pictures come within the prohibited statute.

The COURT: I don't think there is any necessity of making an exhibition of vulgar and obscene pictures to the jury if the defendant is willing to admit that they are lewd and lascivious.

Mr. REYNOLDS: I suppose they will attempt to prove the good character of the defendant to the jury. I dislike very much as a man to stand up before the court and jury and offer such pictures. I only do it in the firm desire of fairly presenting this case to the jury.

The COURT: Very well; proceed then, notwithstanding the admission.

(Twelve pictures, each marked "R. W. M., 8-6-99," shown to the jury.)

Mr. REYNOLDS: Now, what took place in connection with the Indianapolis letter?

52 A. I didn't explain about the postmark on that there.

Q. Well, finish.

A. I used the same kind of a postmarked envelope, as my recollection goes, in that letter as I did in the former from Texas; some envelopes that we had had in our possession for some time. In the Indianapolis matter I sent and had an envelope postmarked by the post office department there and sent to me here under cover and used it for enclosing this letter and delivered it to the carrier for delivery, "The Bates; Louis Ravold, proprietor."

The COURT: What is that? You had an envelope?

A. I had an envelope from the Bates house, Indianapolis, stamped and postmarked.

The COURT: At Indianapolis?

A. At Indianapolis, and enclosed to me here under official cover, in which I put this letter: "Mr. William Grimm, St. Louis, Mo.: I have received your note of the 22nd offering fancy photographs for

$2.00 per dozen and $12.50 per 100. As I will have time to hear from you again before going on a long trip, will send you $2.00 in this for a sample dozen and if they are satisfactory you will hear from me again. Have you any except cabinet sizes? Address, as before, Herman Huntress, care Bates house;" and in response to that I received this package, addressed under cover from the post office at Indianapolis to me, tied up carefully.

Mr. REYNOLDS: I offer that and will follow it up with the same testimony. The witness is here from Indianapolis, is he, Mr. McAfee, who received it from the express office?

A. Yes, sir.

Mr. REYNOLDS: I don't care to offer these photographs if you admit they are of the same kind.

Mr. DYER: I said to the court awhile ago that as far as the pictures themselves are concerned I was willing to admit their character and the gentlemen didn't see fit to take the admission.

53 Mr. REYNOLDS: I didn't think I ought to have done it. I don't insist on exhibiting these to the jury, the admission being they are of vulgar character and like those admitted.

Mr. DYER: I don't admit they are like them.

The COURT: The package may be marked and considered in evidence.

Mr. REYNOLDS: Marked how?

A. With my initials and the date of reception.

Q. How many pictures are in it?

A. Thirteen in this one.

Q. And marked how?

A. R. W. M., S, 1, '90; box, wrapper, and all.

Pictures so marked *where* thereupon exhibited to the jury.

Q. Now, Mr. McAfee, what, if any, conversation did you have with Mr. Grimm—or you say you got a trunk from him?

A. Yes, sir.

Q. With negatives, etc., in it?

A. Yes, sir.

Q. Is that the trunk?

A. That is the trunk, sir.

Q. I will ask you to open it. I understand you to say that you sealed it up as soon as it was received?

A. The following morning. I locked it as soon as I received it, and on the following morning Mr. Dice and I took an inventory of it and sealed it up with wax, as it is now sealed.

Q. First, is there anything in that trunk that wasn't there when you got it from Mr. Grimm?

A. No, sir; I think not.

Q. Has any one had access to it, or has the seal been broken from that to this date?

A. It has no appearance of being opened.

Mr. REYNOLDS: I offer that and its contents.

Mr. DYER: That is objected to on the ground there is no
54 such charge in this indictment, and it is no offense against the statute of the United States.

The COURT: Well, that objection is overruled. I think it stands on the same basis as those pictures, and is admitted for the same purpose.

(To which action and ruling of the court the defendant then and there duly excepted at the time.)

(Trunk is opened by witness in the presence of the jury.)

Mr. REYNOLDS: What is that?

A. That is a package that was sealed up by the State officer.

Q. I will ask whether you have examined that and determined whether or not the negatives of the pictures that have been exhibited here are in that trunk.

A. Yes, sir; and also duplicates of some.

Q. Duplicates of the same pictures?

A. Yes, sir; they are all put in envelopes and numbered as the pictures are numbered, containing from one to five in each envelope.

Q. About how many negatives are in there?

A. 187, I think, sir.

Mr. REYNOLDS: I believe that is all I have to ask this witness.

The WITNESS: There is one further statement I would like to make if you allow me. It came to my recollection since my first examination. Mr. Grimm says, "I hav'n't been sending these pictures by mail;" he says, "I have been sending them by express;" and I told him he was not charged with sending the pictures by express, but with sending this letter giving notice where they could be had, and he said he didn't know that was a violation of the law.

Cross-examination by D. P. DYER, Esq.:

Q. This second letter that you wrote and signed Huntress' name to was a letter that you wrote yourself; no such person as Huntress, to your knowledge, and nobody else ever saw that letter—no
55 other man except you and Grimm, to your knowledge?

A. No; I never saw anybody else have it.

Q. You wrote this other letter that you had and sent it through the post office, asking him to send those matters to you?

A. Asking for information relative to his pictures.

Q. You sent him two dollars in this second letter?

A. Yes, sir.

Q. And told him to send you the pictures?

A. Yes, sir.

Q. And you did that and signed the name of Huntress to one and of Waters to the other?

A. I asked instead of signing the name—I asked to be addressed as so and so, simply giving that as an address to write to me.

Q. You wrote the entire letter?

A. I did, sir.

Q. And whatever name was written there, whether down at the bottom or on the top of it, you wrote yourself?

A. I did, sir.

Q. And called yourself Waters and called yourself Huntress?

A. That is it, sir; and no one else knew the contents of it but myself.

Q. And you as an officer of the Government of the United States wrote that second letter for the purpose of making a case against this defendant?

A. For the purpose of ascertaining what Mr. Grimm was dealing in.

Q. And you considered that your business as an officer of the Government to ascertain what men are dealing in without knowing that they had anything that particularly violated the law?

A. No, sir; not without complaint has been made that the law has been violated, I would not consider it my duty to do so.

Q. At the time that you wrote that letter did you have or have you in your possession now or have you ever had in your possession any other letter written by this defendant than those
56 that you have exhibited here upon this occasion?

A. I have not had them in my possession. I have heard of them.

Q. You answer my question, if you please, sir.

A. Well, I did. I say I have not had them in my possession.

Q. Have you ever seen a letter or had you ever seen a letter purporting to have been written by this defendant in reference to photographs prior to the time that you sat down and wrote those letters addressed to him as Huntress and Waters?

A. I have never seen a letter of that kind, but complaint was made there were such letters and such pictures being sent by Grimm.

Q. You saw them?

A. I did not.

Q. I asked you if you had ever seen anything of that sort.

A. I did not.

Q. You went to work as a Government officer for the purpose of trapping this man if you could?

A. I went to work for the purpose of ascertaining whether the complaint that was lodged in the department was true or false, and with the supposition gained by long experience——

Mr. REYNOLDS: Never mind about suppositions. I have no objection to facts, but suppositions might run us into difficulties.

JOHN C. WHITEHEAD, being duly sworn on the part of the plaintiff, testifies as follows:

Direct examination by District Attorney REYNOLDS:

Q. What is your name?

A. My name is John C. Whitehead.

Q. You are a letter-carrier in this city?

A. Yes, sir.

Q. Were you such along in the months of August and July, 1890?

A. Yes, sir.

Q. What was your route?

57 A. Pine, Olive street, Lucas place, and St. Charles from 21st street to Jefferson avenue.

Q. Do you know the defendant, William Grimm?

A. Yes, sir.

Q. Is his house, residence, or place of business on your route?

A. His place of business was on my route.

Q. At that time?

A. At that time; yes, sir.

Q. Do you remember the fact, as mail-carrier, of delivering any two certain letters?

A. Yes, sir; I remember delivering him one letter postmarked Clarksville, Texas, I believe, on July 19th. I delivered on the 21st to Miss Grimm at 2.40 p. m.

Q. Who is Miss Grimm?

A. Mr. Grimm's daughter.

Q. A young lady that is at his studio there; he is an artist, photographer, and has a studio there, a gallery?

A. Yes, sir.

The COURT: What year was that?

A. 1890.

Mr. REYNOLDS: 1890?

A. Yes, sir.

Q. And then another one?

A. There was another letter I delivered to him postmarked Pittsburgh R. P. O.; I believe St. Louis. I delivered it to his daughter on the 22nd of July at 2.40 p. m.

Q. Where did you deliver both of these letters to his daughter; at what place?

A. At 2341½ Olive street.

Q. Was she in the habit of receiving mail directed to him there?

A. Yes, most of the time.

Q. How did you happen to notice these particular letters?

A. I had a memorandum of them.

58 Q. Did you deliver any other letters than those two?

A. Yes, sir.

Q. What and when?

A. I delivered one on the 20th—let's see, it was from Clarksville, Texas, postmarked Clarksville, Texas; let's see, I believe it was July 28th—July 26th—and I delivered it at 2.35 p. m. on July 28th, 1890, to Miss Grimm.

Q. And then any other one?

A. And then there was one from Indianapolis, Indiana. I believe it was postmarked on the 28th and I delivered it on the 29th to one of Mr. Grimm's employés.

Q. At his place of business?

A. Yes; at his place of business.

Q. Do you know whether or not Mr. Grimm was there himself at the time?

A. Well, Mr. Grimm was there sometimes when I delivered letters

there. I generally laid them on his desk or handed them to Miss Grimm.

Q. How did you deliver them?

A. His place of business is on the second floor; just walked into the office and delivered the mail there.

Q. Walked into his office and delivered the mail there on the table or desk?

A. Yes, sir.

Cross-examination by D. P. DYER, Esq.:

Q. All of those letters you got from McAfee himself, didn't you?

A. Yes, sir.

Q. Didn't get them out of the post office?

A. Yes; they were in the post office.

Q. Who delivered them to you?

A. Mr. McAfee.

Q. Did they have any other mark on them besides the postmark at Indianapolis and the postmark at Clarksville, Texas?

59 A. That I could not say. I don't remember.

Q. Did they have the receiving stamp of the St. Louis post office on them?

A. I couldn't say that.

Mr. REYNOLDS: Do you know whether or not they had the back stamp on them?

A. That is what I couldn't say. I don't remember.

Q. Your attention wasn't called to that?

A. No, sir.

THOMAS W. GAINS, being duly sworn on the part of the plaintiff, testifies as follows:

Direct examination by District Attorney REYNOLDS:

Q. What is your name?

A. Thomas W. Gains.

Q. Where do you live?

A. Clarksville, Texas.

Q. What is your business?

A. Postmaster.

Q. What place or office were you holding in the year 1890, in the summer of that year, July and August, along there?

A. Postmaster at Clarksville.

Q. How long have you been postmaster, Mr. Gains?

A. I got the office in 1889, the first day of December, 1889.

Q. Mr. Gains, did you ever see that letter, that envelope, before?

A. Yes, sir.

Q. It is marked Exhibit No. 2, the one addressed to Mr. William Waters, care W. S. Campbell & Co., Clarksville, Texas.

A. It came to the office at Clarksville.

Q. It came to the post office at Clarksville?

A. Yes.

Q. In due course of mail?

A. Yes, sir.

60 Q. Received with the other mail from St. Louis?

A. Yes, sir.

Q. What did you do with it when you received it?

A. I received it the 23rd day of July.

Q. What year?

A. 1890. Do you want to know what I done with it?

Q. Yes.

A. I put a private mark on it so I would know it in case I was called on to prove it.

Q. What is the private mark on it?

A. G. W. T.

Q. That is your private mark?

A. Yes, sir.

Q. Then what did you do with it?

A. I mailed it to Mr. McAfee under official—put an official envelope on it and mailed it to Mr. McAfee—directed it to St. Louis, Mo.

Q. Did you open it before you sent it to him?

A. I did not, sir.

Q. It was not open when you transmitted it to him?

A. It was not.

Q. Was it sealed and a stamp on it; did it come in that shape, as a sealed envelope, when you received it?

A. Yes, sir.

Q. And you sent it away in the same order, enclosed in an official envelope, directed to R. W. McAfee, post-office inspector, St. Louis, Missouri?

A. Yes, sir.

Q. Now, Mr. Gains, did you ever see this paper, a package addressed in that way (showing witness express package marked R. W. M., 8, 6, '90), addressed Mr. William Waters, care W. S. Campbell & Co., Clarksville, Texas; did you ever see that before?

A. Yes, sir.

61 Q. Where, when, under what circumstances, and what did you do with it?

A. I got it out of the express office at Clarksville, Texas.

Q. Did you receipt for it?

A. At the express office, and remailed it the same as I did the letter to Mr. McAfee, the inspector, by his request; put a private mark on it so I would know it.

Q. Where is your private mark?

A. Upper left-hand corner.

Q. What is it?

A. W. G. T.

Q. Was it closed when you got it from the express office?

A. It was closed; never been opened, to my knowledge.

Q. How was it delivered to you at the express office?

A. Delivered to me by Mr. Sanderson, the express agent.

Q. Do you recognize that as the stamp of the express office in the corner there?

A. Yes, sir.

Q. At your town?

A. At our town.

Q. You are sure it was unopened when it left your possession and when it came into your possession?

A. Yes, sir.

Cross-examination by Mr. DYER:

Q. How long did you keep the letter addressed to William Waters after it was received by you as postmaster at Clarksville, Texas, before you sent it to Mr. McAfee?

A. I don't recollect that, that I can tell you how long I kept it. I received it on the 23rd day of July and I don't recollect when I mailed it. I mailed it when I was requested to mail it. I hav'n't got my mailing stamp on the package to state when I did send it.

Q. I am talking about the letter first. Now, had you been previously advised before that letter came to you first by McAfee
62 that if any letter came there addressed to Waters that you were to send it back to him?

A. Yes, sir.

Mr. REYNOLDS: Excuse me a moment. Do you recognize that as the envelope that you mailed that letter back to McAfee in?

A. Yes, sir; addressed it myself.

Q. What is the date of it?

A. July 23rd.

Mr. DYER: Then you returned the letter to McAfee the day that you received it at the post office at Clarksville?

A. Yes, sir; July 23rd.

Q. When you went to get the package out of the express office did you receipt for that package to the express agent?

A. I can't say if I did or not. If it is there, well and true. He let me have the package.

Q. Had you been previously advised by McAfee to send the package back?

A. Yes; he informed me that there would be a package at the express office; to get it out.

Q. Were the charges paid or unpaid on the package?

A. They were unpaid.

Q. Did you pay them?

A. Yes, sir.

Q. How much?

A. 25 cents.

Q. Did you tell the express company that you had been requested by McAfee to send that package back here?

A. Yes, sir. He let me have it then, when I told him that.

Q. And whether you receipted for it you don't know?

A. I don't think I did, though.

Q. The contents of the letter nor the package you never saw?

A. Never saw; didn't know what it was.

Mr. REYNOLDS: There is the letter you transmitted the
63 express package back with?

A. Yes, sir.

WILLIAM HOLT, being duly sworn on the part of plaintiff, testifies as follows:

Direct examination by Mr. District Attorney REYNOLDS:

Q. What is your name?
A. William Holt.
Q. Where do you live?
A. Indianapolis, Ind.
Q. What is your business?
A. Hotel clerk.
Q. In what house?
A. Bates house.
Q. Were you there in 1890, in August?
A. Yes, sir.
Q. Do you know Mr. McAfee?
A. I do.
Q. Mr. Holt, did you ever see this package before?

(Referring to package addressed to Herman Huntress and formerly identified by witness McAfee.)

A. Yes, sir.
Q. Under what circumstances did you see it and how did you get it at the time?
A. I received it from either the Adams or the States Express Company at 2 o'clock in the afternoon.
Q. At what time?
A. About 2 in the afternoon.
Q. When?
A. On the 31st day of July, 1890. The mail-carrier inquired at the half-past-one delivery if I had a package in the express for Herman Huntress. I told him I had not. He said, If you do let
me know. At 2 o'clock the express company delivered this
64 to me and on the 2.30 delivery I told him I had the package.
Q. That is the package?
A. Yes, sir.
Q. You receipted for it?
A. I did.
Q. What did you do with it?
A. Put it in the express-room.
Q. Then what did you do with it?
A. Well, then, at 4 o'clock, Mr. Craft, superintendent of mails, came over and introduced himself, and told me he wanted the package for Herman Huntress. I told him there was a quarter charges on it. He paid me, and he said he wanted it, and if I got

in any trouble about it that the Government would stand good for it, so I delivered it to Mr. Craft.

Q. Mr. Craft is here?

A. Yes, sir.

Q. In what condition was it when you received it from the express company?

A. It was covered with brown paper.

Q. Wrapped up and sealed?

A. Yes, sir.

Q. Did you open it?

A. I did not.

Q. Was it opened in your presence?

A. It was not.

Q. Did you know what was in it?

A. I did not.

Q. You delivered it to Mr. Craft in the condition in which you received it?

A. Yes, sir.

65 R. P. CRAFT, being duly sworn on the part of the plaintiff, testifies as follows:

Direct examination by Mr. District Attorney REYNOLDS:

Q. What is your name?

A. R. P. Craft.

Q. What is your occupation?

A. I am superintendent of the city delivery at Indianapolis, Indiana.

Q. How long have you been in that position?

A. About three years.

Q. Were you occupying that posotion in the summer of 1890?

A. Yes, sir.

Q. Did you ever see that package that is on the stand there before?

A. Yes, sir.

(Identifying package addressed to Herman Huntress and previously identified by witness McAfee.)

Q. Under what circumstances did you see it and who did you get it from?

A. I got it from Mr. Holt, clerk of the Bates.

Q. At Indianapolis, Indiana?

A. Yes, sir.

Q. In what condition was it?

A. Tied and sealed; tied up securely.

Q. What did you do with it?

A. I immediately forwarded it, on Mr. McAfee's order, to him at St. Louis.

Q. Did you open it before you sent it to him?

A. No, sir.

Q. It went to him in the same condition that you received it?

A. Yes, sir.

Q. Now, Mr. Craft, did you ever see this envelope before, addressed Mr. Herman Huntress, care Bates house, Indianap-

66 olis, Indiana, postmarked St. Louis, Mo., July 23rd, 2 a. m., and with the business card on it, as follows, "If not called for in three days return to William Grimm's portrait gallery, northeast corner of Jefferson avenue and Olive, St. Louis, Mo.," and a two-cent stamp on it?

A. Yes, sir; I saw it.

Q. And back-stamped Indianapolis, Ind., some date, July something, 1890?

A. Yes, sir.

Q. Under what circumstances did you see it?

A. I had instructed the carrier if such letter came to immediately deliver it to me, acting under order of Mr. McAfee.

Q. How did it come to Indiana, in due course of mail?

A. Yes, sir; over the Vandalia line.

Q. And the carrier delivered it to you?

A. Yes, sir.

Q. In the post office at Indianapolis?

A. As soon as he got it in his mail he handed it right to me.

Q. That is, the carrier that is on the Bates House route?

A. Yes, sir.

Q. What did you do with it?

A. I immediately enclosed it in an official envelope and addressed it to Mr. McAfee at St. Louis.

Q. When was that?

A. That was July 23rd, about 4 o'clock in the afternoon, to my best judgment.

Q. Is that the envelope in which it was enclosed?

A. Yes, sir; that is my handwriting; that is the envelope I put it in.

Q. Addressed R. W. McAfee, P. O. inspector, St. Louis, Missouri, in an official Post Office Department envelope, penalty envelope stamp, etc.

A. Yes, sir.

67 Cross-examination by D. P. DYER, Esq.:

Mr. DYER: You have been there about three years?

A. Yes, sir.

Q. Expect to stay much longer?

A. I do: about four years longer—about five.

Q. Think you have got a dead cinch on it?

A. I think so.

GEORGE W. ECKLE, being duly sworn on the part of the plaintiff, testifies as follows:

Direct examination by Mr. District Attorney REYNOLDS:

Q. What is your name?

A. My name is George W. Eckle.

Q. Where do you live?
A. I live at Shelbina, Missouri.
Q. In the summer of 1890 what were you doing, Mr. Eckle?
A. A United States deputy marshal.
Q. Under Mr. Buchanan here in this district?
A. Yes.
Q. You know Mr. McAfee?
A. Yes.
Q. You know Mr. Grimm?
A. Yes, sir.
Q. Were you the officer who accompanied Mr. McAfee on the occasion of the arrest of the defendant?
A. I was.
Q. Will you state to the court and jury what took place in that connection?

Mr. DYER: The court will understand us as still saving these exceptions and objections to this testimony as to what took place.

The COURT: What is the particular point of your objection?

68 Mr. DYER: My particular point is that this man can't give a conversation or any conversation between this defendant and Mr. McAfee with reference to this particular matter. I suppose you want to call out the conversation that took place between these parties at the time.

The COURT: That being the objection, I will overrule it.

(To which action and ruling the defendant then and there duly excepted at the time.)

A. August 7th, 1890, Mr. McAfee came in the marshal's office and Mr. Buchanan told me to go with him.

The COURT: Begin a little further along than that; come at once to the actual transaction or conversation.

Mr. REYNOLDS: You went along with Mr. McAfee to make this arrest?
A. I went with Mr. McAfee.
Q. Where did you meet Mr. Grimm?
A. Grimm?
Q. Yes.
A. We met him over in the south part of the city. We met Mr. Grimm and I recognized him, and I asked him if his name was William Grimm. He said yes, and I told him I was a deputy United States marshal and I had a warrant for his arrest, and he said what was it for, and I told him if he would keep quiet a minute I would read it to him, and he was, and I read it to him, and he says, "You have got the wrong man." Well, I told him I didn't know whether I had or not, but if his name was William Grimm I thought I had the right man. He asked me what I was going to do with him, and I told him I would have to take him up to higher authority than I was. He asked me where that was, and I told him down to this building, the Government building. So we started, and when we got over to 12th street, instead of coming down to the

building direct, we went over to his place on Olive and Jefferson. Before we went to the house he asked me if I would go in and take a glass of beer with him. I told him I would, and we went
69 and took a glass of beer, and he asked me again what it was for. I told him I thought it was for sending an obscene letter through the post office. He said that I had the wrong man, and I told him we had better come up to the office here. We went up to the office, and Mr. McAfee took charge of him and made a search and got all the articles that were gotten there.

Q. What did you get there?

A. We got some pictures and some negatives and got a trunk with some photographs.

Q. Is this the trunk?

A. Yes, sir; that is the trunk.

Q. You recognize that?

A. It looks very much like the trunk.

Q. Now what conversation, if any, did you hear in his presence, in the presence of the defendant Grimm, on that occasion, at his studio, about the letter written by his daughter and whether or not he told her to write it?

A. No, sir; I don't remember anything in reference to a letter. When they were talking after the trunk was brought up in the room—in the private room—the daughter was not in the room at all. She was in the office, and we went in, it seems, as a private room, more private than the office, with the trunk, and the two men that were with us and Mr. McAfee and myself, and while Mr. McAfee was in the office with Mr. Grimm we were looking at the photographs—examining the photographs.

Q. That took your attention away from the conversation?

A. But when Mr. McAfee asked me—asked one of us men with him there to go down to the laundry and bring up that trunk, Mr. Grimm remarked to me as he passed—he says, "I believe you have got me." I remember that word distinctly, and I just remarked to him, "I thought we had the right man all the time." That is as much of the conversation as I remember.

70 A. D. Bunson, being duly sworn on the part of the plaintiff, testifies as follows:

Direct examination by Mr. District Attorney Reynolds:

Q. Mr. Bunson, you are a clerk in Major Dice's office down-stairs, are you not?

A. Yes, sir.

Q. Were you present on the occasion of Mr. McAfee receiving those two packages here, this one and this one?

A. Yes, sir.

Q. Did you see them opened?

A. Yes, sir.

Q. What condition were they in when Mr. McAfee received them?

A. They were sealed—in perfect condition.

Q. Any evidence of having been opened before?
A. No, sir.
Q. Could you see what he got out of them?
A. Yes, sir; I did.
Q. Do you know whether or not he marked them as he got them out?
A. Yes, sir.
Q. Do you recognize those as any of them that came out of that?
A. Yes, sir; these were in this box.
Q. In this box here?
A. Yes, sir.
Q. That is, in the box marked William Waters, care Mr. William Campbell & Co., Clarksville, Texas?
A. Yes, sir.

(No cross-examination.)

Mr. REYNOLDS: The envelopes are in evidence with the postmarks on them, and also the pictures; that is the case for the Government.

The plaintiff here rested its case.

71 The defendant thereupon moved the court to instruct the jury that under the evidence introduced by the Government and the indictment in this case to acquit the defendant.

Which motion was by the court overruled; to which action and ruling of the court the defendant then and there duly excepted at the time.

The defendant offered no testimony.

The defendant was personally present in court and also represented by counsel at all the foregoing proceedings.

(It is conceded by defendant that the pictures and negatives given in evidence are obscene, lewd, and lascivious. On this concession it is stipulated by the defendant, as well as by the United States, that the pictures and negatives need not be incorporated in the bill of exceptions.)

The court thereupon gave the jury the following charge:

GENTLEMEN OF THE JURY: What has occurred during the progress of this trial advises you, I think, very fully what functions you have to perform, now that the testimony is ended. You have heard me state here in your presence that the offence charged in the various counts of this indictment consists in depositing a letter in the United States mail or in a United States post office giving information, directly or indirectly, where or how or of whom or by what means any obscene, lewd, or lascivious picture may be obtained.

In the first count, or rather in the first and second counts, of the indictment the letter which the defendant is charged to have mailed was a letter addressed to Herman Huntress, care of Bates house, Indianapolis, Indiana, and reads as follows:

"Mr. Huntress, Richmond.

DEAR SIR: I received your letter this morning. I will let you have them for $2.00 per dozen and $12.50 per 100. I have about 200 negatives of actresses.

Respectfully, WILLIAM GRIMM."

72 The Government's contention is that the defendant deposited that letter in the mail and that his purpose and object in so depositing it was to give information to the party addressed as Mr. Huntress where he could obtain obscene, lewd, and lascivious pictures. Now, if you find that the defendant deposited the letter described in the second count, as charged in the indictment—that is, that he deposited it in the United States mails—and that that letter conveyed information to the person addressed under the name of Herman Huntress where such lewd and obscene pictures could be obtained, and if you believe that the defendant mailed the letter with the intent on his part to convey such information, then he should be found guilty under the second count of the indictment, providing the testimony satisfies you of the facts I have mentioned beyond any fair or reasonable doubt.

The letter referred to in the third and fourth counts of the indictment is a letter of the following tenor and effect:

"ST. LOUIS, *July* 21, 1890.

Mr. William Waters:

Yours at hand of the 21st. I will make them for $2.00 per dozen and $12.50 per 100.

Address—

WILLIAM GRIMM,

Northeast Corner Olive and Jefferson, St. Louis, Missouri.

P. S.—Different sizes."

The Government's contention under the third and fourth counts of the indictment is that the defendant deposited in the United States mail here at St. Louis a letter of the tenor and effect that I have just read to you, and that that letter was intended by the defendant to convey information to the person addressed under the name of William Waters where lewd and lascivious pictures could be obtained. Now, under the fourth count of the indictment the questions you have to determine are these: Did the defendant deposit a letter of that description, thus addressed, in the mail or in the United States post office at St. Louis, Missouri, and did he so deposit it intending thereby to give information to the party addressed under the name of William Waters where lewd and lascivious pictures could be obtained; and, furthermore, did that

73 letter convey such information to the party so addressed? If you find that he did so deposit it, and that the letter conveyed information to the party addressed under the name of William Waters where lewd and lascivious pictures could be obtained, and that the defendant intended the letter to convey such information, and you are satisfied of those facts beyond any reasonable doubt,

then you should find the defendant guilty under the fourth count of the indictment.

These are the simple questions of fact that you have to consider other than the question whether those pictures exhibited to you came from defendant's studio and whether they are lewd and lascivious pictures. You have heard me rule during the progress of the trial that the fact that there was no person by the name of Huntress who was addressed at Indianapolis and that there was no person by the name of William Eaters is not a defense to this action. The fact that the person who sent the communication to this defendant making inquiries for fancy pictures was a person who went by a different name than the name under which he assumed to write those letters is not a defense to this suit; it is not a valid excuse on the part of the defendant for the act complained of (provided you find that he did commit the act charged) that he addressed these letters to a person who was seeking to unearth an offense and was acting at the time under an assumed name without the defendant's knowledge.

Gentlemen, I believe that is all I have to say to you in this case.

The first and third counts of the indictment appear to the court to be insufficient in law to support a conviction; for that reason you may return a verdict of not guilty as to the first and third counts by direction of the court.

The jury then retired, and in due time returned and, in open court in the presence of the defendant, presented the following as their verdict, which was by the court received, and to which
74 verdict and to which action of the court in so receiving said verdict defendant then and there duly excepted at the time:

The verdict of the jury is in words and figures as follows:

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } ss:

In the District Court of the United States in and for the Eastern Division of said Judicial District, May Term, A. D. 1892.

THE UNITED STATES, Plaintiff,
vs.
WILLIAM GRIMM, Defendant. } No. 3406.

THURSDAY, *5th May*, 1892.

We, the jury in the above-entitled cause, find the defendant not guilty as charged in the 1st & 3rd counts, by direction of the court, and guilty as charged in the indictment on second and fourth counts.

C. H. SAMPSON, *Foreman.*

On the seventh day of May, A. D. 1892, defendant foles his motion for a new trial in words and figures as follows:

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } ss:

In the District Court of the United States in and for said Division of said District.

UNITED STATES
vs.
WILLIAM GRIMM, Defendant.

Now comes the defendant in the above-entitled cause and moves the court to set aside the verdicts against him and to grant him a new trial for the following reasons, to wit:

First. Because the verdict is against the evidence.

Second. Because the verdict is against the law.

Third. Because the verdict is against the law and the evidence and the law under the evidence and the weight of the evidence.

Fourth. Because the court erred in admitting illegal and incompetent evidence, offered by the United States against the defendant upon the trial of said cause, against the objection of defendant then and there duly made at the time, and to which action on the part of the court the defendant then and there excepted at the time.

Fifth. Because the court erred in its charge to the jury,
75 and to the giving of which the defendant then and there duly excepted at the time.

Sixth. Because the court erred in permitting the introduction of any evidence whatever under any and all counts of the indictment against the objections of the defendant then and there duly made at the time, and to which action on the part of the court the defendant then and there excepted at the time.

Seventh. Because under the evidence the court had no jurisdiction to try said cause or to submit the same to the jury for their verdict.

Eighth. Because the court erroneously permitted the introduction of evidence on the part of the United States at variance with allegations of the indictment and not pleaded or set forth therein against the objections of the defendant then and there made at the time, and to which action on the part of the court the defendant then and there duly excepted at the time.

Ninth. Because there was no evidence introduced tending to prove the guilt of the defendant.

Tenth. Because the court erroneously refused to direct the jury to acquit the defendant on the evidence presented, to which refusal on the part of the court the defendant then and there duly excepted at the time.

D. P. DYER AND
LOUIS A. STEBER,
Attorneys for Defendant.

And on the seventh day of May, A. D. 1892, defendant files his motion in arrest of judgment in words and figures as follows:

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } *ss:*

In the District Court of the United States in and for said Division of said District.

UNITED STATES
vs.
WILLIAM GRIMM, Defendant.

76 Now comes the defendant, William Grimm, and moves the court to arrest the judgment herein and that no judgment be rendered on the verdict of the jury or finding of the court for the following reasons, to wit:

First. That the facts stated or alleged in the indictment do not constitute an offense under the laws of the United States.

Second. That the verdict is insufficient to sustain a judgment.

Third. That the indictment in all its counts is vague, indefinite, and uncertain and does not state any offense under the laws of the United States.

Fourth. Because the court had and has no jurisdiction over the subject-matter of this suit.

Fifth. Because the allegations in the indictment contained are inconsistent and repugnant to one another.

D. P. DYER AND
LOUIS A. STEBER,
Attorneys for Defendant.

And now, on the 21st day of May, A. D. 1892, the court, having duly considered defendant's motion for a new trial and being fully advised thereof, overruled said motion; to which action of the court in so overruling said motion the defendant then and there duly excepted at the time.

And now, on the 21st day of May, A. D. 1892, the court, having duly considered defendant's motion in arrest of judgment and being fully advised thereof, overruled said motion; to which action of the court in so overruling said motion the defendant then and there duly excepted at the time.

And now, on the 21st day of May, A. D. 1892, the court duly imposed its sentence as follows, defendant being personally present with counsel:

77 THE UNITED STATES, Plaintiff, *vs'st* WILLIAM GRIMM, Defendant. } No. 3406. Indictment for Violation of Sec. 2, p. 496, Vol. 25, United States Statutes at Large.

* * * * * * *

And the said defendant being present in court in compliance with the recognizance heretofore entered into by him herein, the said district attorney asks the judgment and sentence of the court upon the

verdict of guilty heretofore returned by the jury in this cause to the second and fourth counts of the indictment herein.

And the said defendant having nothing further to say, after demand made of him, why such judgment and sentence should not be so rendered—

It is therefore now considered by the court and as the judgment and sentence of the court upon the said verdict of guilty so returned by the jury in this cause that he, the said defendant, William Grimm, be confined and imprisoned in the penitentiary of the State of Missouri, at Jefferson City, Missouri, for and during the term of (1) one year and (1) one day, and that he be kept at hard labor during said term.

To which action of the court in imposing sentence the defendant then and there duly excepted at the time.

And on said 21st day of May, A. D. 1892, on motion of defendant the court suspended the execution of said sentence and granted a stay thereof until June 25th, A. D. 1892, to enable defendant to apply for a writ of error to the U. S. Supreme Court.

Signed, sealed, and made a part of the record in the above cause this 25th day of June, 1892.

[SEAL.] AMOS M. THAYER,
District Judge.

78 And on the twenty-fifth day of June, A. D. 1892, an assignment of errors was filed in said cause; which assignment of errors is in the words and figures following, to wit:

UNITED STATES OF AMERICA, }
Eastern Division, Eastern Judicial Dist. of Mo. }

In the District Court of the United States within and for the Eastern Division of the Eastern Judicial District of Missouri.

UNITED STATES }
vs. } No. 3406.
WILLIAM GRIMM. }

Now, at this day, comes the above named defendant and makes the following assignment of errors:

1st. The court erred in not sustaining the defendant's demurrer to the indictment.

2nd. The court erred in admitting against the objections of the defendant incompetent and illegal evidence offered by the Government.

3rd. The court erred in refusing to give direction to the jury at the instance of the defendant to acquit the defendant upon the proof offered by the Government.

4th. The court erred in refusing to grant a new trial to the defendant for the reasons stated in the motion.

5th. The court erred in overruling the motion of the defendant in arrest of judgment.

6th. The court erred in its charge to the jury.

7th. The court erred in receiving the verdict returned by the jury.

L. A. STEBER &
D. P. DYER,
Att'ys for Def't.

79 UNITED STATES OF AMERICA, } ss:
Eastern Division of the Eastern Judicial District of Missouri. }

I, William Morgan, clerk of the district court of the United States in and for the eastern division of the eastern judicial district of Missouri, do hereby certify the writing hereto annexed to be a true transcript of the record and proceedings in case No. 3406 of The United States, plaintiff, against William Grimm, defendant, as fully as the same remain on file and of record in said case in my office.

Seal of the United States District Court, Eastern Division of the Eastern Judicial District of Missouri.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in said district, this sixteenth day of July, in the year of our Lord eighteen hundred and ninety-two.

WM. MORGAN,
Clerk of said Court.

[Endorsed:] No. 3406. A. D. 1891. United States district court, eastern division of the eastern judicial district of Missouri. The United States, plaintiff, against William Grimm, defendant. Duly certified transcript of the record and proceedings in the above-entitled cause.

[Endorsed:] U. S. *v.* Wm. Grimm.

Endorsed on cover: Case No. 15,085. E. Missouri D. C. U. S. Term No., 424. William Grimm, plaintiff in error, *vs.* The United States. Filed July 20th, 1892.

156-604

Office Supreme Court, U. S.
FILED.
JAN 21 1895
JAMES H. McKENNEY.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

WILLIAM GRIMM,
Plaintiff in Error,

vs.

THE UNITED STATES,
Defendant in Error.

No. 424.

STATEMENT AND BRIEF FOR PLAINTIFF IN ERROR.

D. P. DYER,
Attorney for Plaintiff in Error.

A. R. FLEMING & CO., PRINTERS, 722 N. Third Street, ST. LOUIS, MO.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

WILLIAM GRIMM,
Plaintiff in Error,

vs.

THE UNITED STATES,
Defendant in Error.

No. 424.

STATEMENT FOR PLAINTIFF IN ERROR.

At the May term, 1891, in the District Court of the United States, within and for the Eastern Division of the Eastern Judicial District of Missouri, the grand jury returned the following indictment:

"The grand jurors of the United States, duly empaneled, sworn, and charged to enquire in and for the said division of said judicial district of Missouri, upon their oaths present—

That one William Grimm, late of said division of said district, heretofore, to-wit: on the twenty-third day of the month of July, in the year of our Lord eighteen

hundred and ninety, at said division of said district, did then and there unlawfully, feloniously, and knowingly deposit, and cause to be deposited, in the post-office of the United States, at St. Louis, Missouri, for mailing and delivery, a written and printed letter and notice, giving information, directly and indirectly, to one Robert W. McAfee, and divers other persons whose names are to the jurors aforesaid unknown, and for that reason cannot be herein stated, where, how, of whom, and by what means obscene, lewd and lascivious pictures, papers and prints of an indecent character, and intended and adapted for an indecent and immoral use, might be obtained, which said letter and notice was then and there non-mailable matter, and was then and there contained in an envelope and wrapper bearing and having thereon the address and superscription following, to-wit: 'Mr. Herman Huntress, care of Bates House, Indianapolis, Ind.,' contrary to the form of the statutes of the United States in such case made and provided, and against its peace and dignity.

Second count.—And the grand jurors aforesaid, upon their oaths aforesaid, do further present that afterwards, to-wit: on the day and year aforesaid, at the division and district aforesaid, said William Grimm, late of said division of said district, then and there received a letter, addressed and delivered to him, of the following tenor:

'RICHMOND, IND., *July 21st*, 1890.

MR. WILLIAM GRIMM, Saint Louis, Mo.

Dear Sir:—A friend of mine has just showed me some fancy photographs and advised me that they could be obtained from you. I am on the road all the time, and I am sure many of them could be sold in the terri-

tory over which I travel. How many different kinds can you furnish? Send me price-list showing your rates by the hundred and dozen. Address me at once at Indianapolis, Ind., care Bates House, and I will send you a trial order.

HERMAN HUNTRESS.'"

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that on the day and year first aforesaid the said William Grimm then and there had in his possession and under his control a large number, to-wit: eight hundred obscene, lewd and lascivious pictures, papers and prints of an indecent character, and intended and adapted for an indecent and immoral use, and that said William Grimm, in response to said letter, on the day and year first aforesaid, did then and there unlawfully, feloniously and knowingly deposit, and cause to be deposited, in the post-office of the United States, at St. Louis, Missouri, for mailing and delivery, a written and printed letter and notice, giving information, directly and indirectly, to one Robert W. McAfee, and divers other persons whose names are to the jurors aforesaid unknown, and for that reason cannot be herein stated, how, where, of whom, and by what means obscene, lewd and lascivious pictures, papers and prints of an indecent character, and intended and adapted for an indecent and immoral use might be obtained, which said letter and notice was then and there non-mailable matter, and was then and there contained in an envelope and wrapper bearing and having thereon the address and superscription following, to wit: "Mr. Herman Huntress, care of Bates House, Indianapolis, Ind.," and which said letter and notice is of the following tenor:

"Wm. Grimm, Photograph and Art Studio, N. E. Cor. of Jefferson avenue and Olive street.

St. Louis, *July*, 22, 1890.

Mr. Huntress, Richmond.

Dear Sir:—I received your letter this morning. I will let you have them for $2.00 per doz. & $12.50 per 100. I have about 200 negatives of actresses.

Respectfully, Wm. Grimm."

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that on the day and year first aforesaid the said William Grimm, when he so deposited, and caused to be deposited, said last-named letter and notice in said post-office, unlawfully, feloniously and knowingly meant and intended thereby to give notice, and did thereby give notice and information to the writer of said first-named letter and to said McAfee, and divers other persons whose names are to the grand jurors aforesaid unknown, where, how, of whom, and by what means obscene, lewd and lascivious pictures, papers and prints of an indecent character, and intended and adapted for an indecent and immoral use might be obtained, contrary to the form of the statutes of the United States in such case made and provided, and against its peace and dignity.

Third count.—And the grand jurors aforesaid, upon their oaths aforesaid, do further present that afterwards, to-wit: on the twenty-first day of the month of July, in the year of our Lord eighteen hundred and ninety, at said division of said district, the said William Grimm, late of said division of said district, did then and there unlawfully, feloniously and knowingly deposit, and

cause to be deposited, in the post-office of the United States, at St. Louis, Missouri, for mailing and delivery, a written and printed letter and notice giving information, directly and indirectly, to one Robert W. McAfee, and divers other persons whose names are to the jurors aforesaid unknown, and for that reason cannot be herein stated, where, how, of whom, and by what means obscene, lewd and lascivious pictures, papers and prints of an indecent character, and intended and adapted for an indecent and immoral use, might be obtained, which said letter and notice was then and there non-mailable matter, and was then and there contained in an envelope and wrapper bearing and having thereon the address and superscription following, to-wit: "Mr. Wm. Waters, care W. S. Campbell & Co., Clarksville, Texas," contrary to the form of the statutes of the United States in such case made and provided, and against its peace and dignity.

Fourth count.—And the grand jurors aforesaid, upon their oaths aforesaid, do further present that afterwards, to-wit: on the day and year last aforesaid, at the division and district aforesaid, said William Grimm, late of said division of said district, then and there received a letter, addressed and delivered to him, of the following tenor:

"CLARKSVILLE, TEXAS, *July* 19, '90.

WM. GRIMM, ESQ., St. Louis, Mo.

Sir:—A gentleman has shown me some of your fancy photographs. Will you please advise me how many subjects you have, and your price per dozen and per 100 lots. I have no doubt they will sell well.

Address— WM. W. WATERS,

Care W. S. Campbell & Co., Clarksville, Tex."

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that on the day and year last aforesaid the said William Grimm then and there had in his possession and under his control a large number, to-wit: eight hundred obscene, lewd and lascivious pictures, papers and prints of an indecent character, and intended and adapted for an indecent and immoral use, and that said William Grimm, in response to said letter, on the day and year last aforesaid, did then and there unlawfully, feloniously and knowingly deposit, and cause to be deposited, in the post-office of the United States, at St. Louis, Missouri, for mailing and delivery, a written and printed letter and notice giving information, directly and indirectly, to one Robert W. McAfee, and divers other persons whose names are to the jurors aforesaid unknown, and for that reason cannot be herein stated, how, where, of whom, and by what means obscene, lewd and lascivious pictures, papers and prints of an indecent character, and intended and adapted for an indecent and immoral use, might be obtained, which said letter and notice was then and there non-mailable matter, and was then and there contained in an envelope and wrapper bearing and having thereon the address and superscription following, to-wit: "Mr. Wm. Waters, care W. S. Campbell & Co., Clarksville, Texas," and which said letter and notice is of the following tenor:

"Wm. Grimm, Photograph and Art Studio, N. E. Cor. of Jefferson avenue and Olive street.

St. Louis, *July* 21, 1890.

Mr. Wm. Waters: Yours at hand the 21st. I

will make them for $2.00 per doz., and $12.50 per 100. Address— WM. GRIMM,

N. E. Cor. Olive and Jefferson, St. Louis, Mo.

P. S.—Different sisses."

"And the grand jurors aforesaid, upon their oaths aforesaid, do further present that on the day and year last aforesaid the said William Grimm, when he so deposited, and caused to be deposited, said last-named letter and notice in said post-office, unlawfully, feloniously and knowingly meant and intended thereby to give notice, and did thereby give notice and information, to the writer of said first-named letter and to said McAfee, and divers other persons whose names are to the grand jurors aforesaid unknown, where, how, of whom, and by what means obscene, lewd and lascivious pictures, papers and prints of an indecent character, and intended for an indecent and immoral use, might be obtained, contrary to the form of the statutes of the United States in such case made and provided, and against its peace and dignity.

GEO. D. REYNOLDS,

United States Attorney, Eastern District of Missouri."

To this indictment the following demurrer was interposed:

"Now comes William Grimm, defendant herein, and demurs to and moves to quash the first count of the indictment herein, for the following reasons, to-wit:

First. That it does not individuate any offense.

Second. That the allegations in said count contained are vague, indefinite and uncertain, and are not suf-

ficient to and do not constitute an offense or statement of a cause of action against him.

Third. That under the letter mailed and addressed to 'Mr. Herman Huntress, care of Bates House, Indianapolis, Ind.,' no information of any kind through the United States mail was or could be given to Robert W. McAfee and divers other persons, etc., it not being alleged that Robert W. McAfee and Herman Huntress are one and the same person, or that that person is as well known by the one name as the other.

Fourth. That the alleged letter therein alluded to is not set forth either in full or in substance.

Defendant further demurs to and moves to quash the second count of the indictment herein, for the following reasons, to-wit:

First. It does not individuate any offense.

Second. That the allegations in said count contained are vague, indefinite and uncertain, and are not sufficient to and do not constitute an offense or statement of a cause of action against him.

Third. That under a letter mailed and addressed to 'Mr. Herman Huntress, care of Bates House, Indianapolis, Ind.,' no information of any kind through the United States mail was or could be given to Robert W. McAfee and divers other persons, etc., it not being alleged that Robert W. McAfee and Herman Huntress are one and the same person, or that that person is as well known by the one name as the other.

Fourth. That defendant's alleged letter therein described as addressed to Herman Huntress on its face gave or gives no information of a prohibited character, nor, taken in combination with the alleged letter of the

alleged Herman Huntress to defendant, does it give any such alleged prohibited information.

Fifth. That the letters to and from defendant, as therein alleged, do not pretend, nor can they be so understood, or the terms therein contained be enlarged by construction to mean that there could or would be furnished by defendant, or any one else, any 'obscene, lewd and lascivious pictures, papers and prints of an indecent character, and intended and adapted for an indecent and immoral use.

Sixth. That the allegations therein contained are inconsistent and repugnant to one another.

Defendant further demurs to and moves to quash the third count of the indictment herein, for the following reasons, to-wit:

First. That it does not individuate any offense.

Second. That the allegations in said count contained are vague, indefinite and uncertain, and are not sufficient to and do not constitute an offense or statement of a cause of action against him.

Third. That under a letter mailed and addressed to 'Mr. Wm. Waters, care W. S. Campbell & Co., Clarksville, Texas,' no information of any kind through the United States mail was or could be given to Robert W. McAfee and divers other persons, etc., it not being alleged that Robert W. McAfee and W. Waters are one and the same person, or that that person is as well known by the one name as the other.

Fourth. That the alleged letter therein alluded to is not set forth either in full or in substance.

Defendant further demurs to and moves to quash the fourth count of the indictment herein, for the following reasons, to-wit:

First. That it does not individuate any offense.

Second. That the allegations in said count contained are vague, indefinite and uncertain, and are not sufficient to and do not constitute an offense or statement of a cause of action against him.

Third. That under a letter mailed and addressed to 'Mr. Wm. Waters, care W. S. Campbell & Co., Clarksville, Texas,' no information of any kind through the United States mail was or could be given to Robert W. McAfee and divers other persons, etc., it not being alleged that Robert W. McAfee and Wm. Waters are one and the same person, or that that person is as well known by the one name as the other.

Fourth. That defendant's alleged letter therein described as addressed to 'Mr. Wm. Waters, care W. S. Campbell & Co., Clarksville, Texas,' on its face gave or gives no information of a prohibited character, nor, taken in combination with the alleged letter of the alleged Wm. Waters to defendant, does it give any such alleged prohibited information.

Fifth. That the letters to and from defendant, as therein alleged, do not pretend, nor can they be so understood, or the terms therein contained be enlarged by construction to mean that there could or would be furnished by defendant, or any one else, any 'obscene, lewd and lascivious pictures, papers and prints of an indecent character, and intended and adapyed for an indecent and immoral use.'

Sixth. That the allegations therein contained are inconsistent and repugnant to one another.

By Louis A. Steber,
Attorney for Defendant."

This demurrer was overruled by the court, and the defendant saved and preserved its exception to this ruling.

The defendant then entered his plea of not guilty, and the trial was proceeded with before the district judge (Thayer) and a jury.

The evidence offered by the Government in support of this indictment is substantially embraced in the testimony of one Robert W. McAfee.

There were one or two other witnesses examined by the Government, but their testimony was only corroborative in a measure of that of McAfee.

McAfee testified that he was a post-office inspector, and also agent of the Western Society for the Suppression of Vice, and that he had been such inspector and agent for several years.

That rumors reached him in some way that the defendant had in his possession, at his place of business, in the City of St. Louis, some "indecent pictures."

That on the 19th day of July, 1890, he wrote the following letter to the defendant:

"CLARKSVILLE, TEXAS, July 19, '90.

WM. GRIMM, Esq., St. Louis, Mo.

Sir:—A gentleman has shown me some of your fancy photographs. Will you please advise me how many subjects you have, and your price per dozen and per 100 lots. I have no doubt they will sell well.

Address, WM. W. WATERS,
Care W. S. Campbell & Co.,
Clarksville, Texas."

This letter was delivered in person by McAfee to John C. Whitehead, a letter carrier in the City of St.

Louis, by whom it was left at the place of business of the defendant (page 41 and following).

This letter was enclosed in an envelope bearing the post-office mark "Clarksville, Texas."

This letter had never been in the post-office at Clarksville, and there was no such person as William W. Waters and no such firm as W. S. Campbell & Co. in existence at the time. The defendant, in answer to this letter, wrote the following reply:

"ST. LOUIS, July 21, 1890.

MR. WILLIAM WATERS.

Yours at hand the 21st. I will make them for $2.00 per dozen, and $12.50 per hundred. Address,

WILLIAM GRIMM,
N. E. Cor. Olive & Jefferson,
St. Louis, Mo.

P. S.—Different sizes."

The letter was directed to William Waters, care W. S. Campbell & Co., Clarksville, Texas.

In the meantime McAfee had notified the postmaster at Clarksville (Thomas W. Gaines) to keep a lookout for such a letter, and, if received at the office, to return it unopened to him at St. Louis. It was received at the Clarksville office July 23d, and at once enclosed in an official envelope and sent to McAfee at St. Louis. *The contents were never seen by any other person than McAfee*, nor was the package sent by express to the same place ever opened or its contents seen and examined by any other person than McAfee. This is a brief history of the "Waters" correspondence referred to, and counted upon in the fourth count of the indictment.

The correspondence upon which the second count of the indictment is based, is as follows:

"RICHMOND, IND., *July 21st*, 1890.

MR. WILLIAM GRIMM, Saint Louis, Mo.

Dear Sir:—A friend of mine has just shown me some fancy photographs and advised me that they could be obtained from you. I am on the road all the time, and I am sure many of them could be sold in the territory over which I travel. How many different kinds can you furnish? Send me price-list showing your rates by the hundred and dozen. Address me at once at Indianapolis, Ind., care Bates House, and I will send you a trial order.

HERMAN HUNTRESS."

This letter, like the one from Waters, was written by McAfee, placed in an envelope and stamped by McAfee, and by him delivered to the carrier at St. Louis for delivery to the defendant.

In answer to this the defendant wrote the following:

"ST. LOUIS, July 22, 1890.

MR. HUNTRESS, Richmond.

Dear Sir:—I received your letter this morning. I will let you have them for $2.00 per dozen and $12.50 per 100. I have about 200 negatives of actresses.

Respectfully,

WILLIAM GRIMM."

This letter was sent to Indianapolis, and, under instructions previously received from McAfee, the postmaster at once, without opening the letter or seeing its contents, sent it to McAfee at St. Louis. There was no such person as Huntress, and no one saw the letter to the defendant or his answer except McAfee.

These are the admitted and substantial facts in the case.

At the conclusion of the evidence for the Government the defendant moved the court to direct the jury to acquit the defendant.

This the court refused, and the defendant then and there saved an exception to the ruling.

The court gave the following charge to the jury, to which the defendant at the time objected, and, his objection being overruled, saved an exception.

"GENTLEMEN OF THE JURY:—What has occurred during the progress of this trial advises you, I think, very fully what functions you have to perform, now that the testimony is ended. You have heard me state here in your presence that the offense charged in the various counts of this indictment consists in depositing a letter in the United States mail or in a United States post-office, giving information, directly or indirectly, where, or how, or of whom, or by what means any obscene, lewd or lascivious picture may be obtained.

In the first count, or rather in the first and second counts, of the indictment the letter which the defendant is charged to have mailed was a letter addressed to Herman Huntress, care of Bates House, Indianapolis, Indiana, and reads as follows:

'MR. HUNTRESS, Richmond.

Dear Sir:—I received your letter this morning. I will let you have them for $2.00 per dozen and $12.50 per 100. I have about 200 negatives of actresses.

Respectfully, WILLIAM GRIMM.'

The Government's contention is that the defendant deposited that letter in the mail, and that his purpose and object in so depositing it was to give information to the party addressed as Mr. Huntress where he could obtain obscene, lewd and lascivious pictures. Now, if you find that the defendant deposited the letter described in the second count, as charged in the indictment—that is, that he deposited it in the United States mails—and that that letter conveyed information to the person addressed, under the name of Herman Huntress, where such lewd and obscene pictures could be obtained, and if you believe that the defendant mailed the letter with the intent on his part to convey such information, then he should be found guilty under the second count of the indictment, providing the testimony satisfies you of the facts I have mentioned beyond any fair or reasonable doubt.

The letter referred to in the third and fourth counts of the indictment is a letter of the following tenor and effect:

'ST. LOUIS, *July* 21, 1890.

MR. WILLIAM WATERS:

Yours at hand of the 21st. I will make them for $2.00 per dozen and $12.50 per 100.

Address: WILLIAM GRIMM,
Northeast Corner Olive and Jefferson,
St. Louis, Missouri.

P. S.—Different sizes.'

The Government's contention under the third and fourth counts of the indictment is that the defendant deposited in the United States mail here at St. Louis a letter of the tenor and effect that I have just read to you, and that that letter was intended by the defend-

ant to convey information to the person addressed, under the name of William Waters, where lewd and lascivious pictures could be obtained. Now, under the fourth count of the indictment the questions you have to determine are these: Did the defendant deposit a letter of that description, thus addressed, in the mail, or in the United States post-office, at St. Louis, Missouri, and did he so deposit it intending thereby to give information to the party addressed, under the name of William Waters, where lewd and lascivious pictures could be obtained; and, furthermore, did that letter convey such information to the party so addressed? If you find that he did so deposit it, and that the letter conveyed information to the party addressed, under the name of William Waters, where lewd and lascivious pictures could be obtained, and that the defendant intended the letter to convey such information, and you are satisfied of those facts beyond any reasonable doubt, then you should find the defendant guilty under the fourth count of the indictment.

These are the simple questions of fact that you have to consider other than the question whether those pictures exhibited to you came from the defendant's studio, and whether they are lewd and lascivious pictures. You have heard me rule during the progress of the trial that the fact that there was no person by the name of Huntress who was addressed at Indianapolis, and that there was no person by the name of William Waters, is not a defense to this action. The fact that the person who sent the communication to this defendant, making inquiries for fancy pictures, was a person who went by a different name than the name under which he assumed to write those letters is not a defense to this suit;

it is not a valid excuse on the part of the defendant for the act complained of (provided you find that he did commit the act charged) that he addressed these letters to a person who was seeking to unearth an offense and was acting at the time under an assumed name without the defendant's knowledge.

Gentlemen, I believe that is all I have to say to you in this case.

The first and third counts of the indictment appear to the court to be insufficient in law to support a conviction? for that reason you may return a verdict of not guilty as to the first and third counts by direction of the court."

The jury found the defendant guilty under the second and fourth counts of the indictment, and not guilty as to the first and third counts.

The defendant filed his motions for a new trial and in arrest of the judgment, as follows:

"Now comes the defendant in the above-entitled cause, and moves the court to set aside the verdicts against him and to grant him a new trial, for the following reasons, to-wit:

First. Because the verdict is against the evidence.

Second. Because the verdict is against the law.

Third. Because the verdict is against the law and the evidence, and the law under the evidence and the weight of the evidence.

Fourth. Because the court erred in admitting illegal and incompetent evidence offered by the United States against the defendant upon the trial of said cause, against the objection of defendant then and there duly made at the time, and to which action on the part of

the court the defendant then and there excepted at the time.

Fifth. Because the court erred in its charge to the jury, and to the giving of which the defendant then and there duly excepted at the time.

Sixth. Because the court erred in permitting the introduction of any evidence whatever, under any and all counts of the indictment, against the objections of of the defendant, then and there duly made at the time, and to which action on the part of the court the defendant then and there excepted at the time.

Seventh. Because under the evidence the court had no jurisdiction to try said cause or to submit the same to the jury for their verdict.

Eighth. Because the court erroneously permitted the introduction of evidence on the part of the United States at variance with allegations of the indictment and not pleaded or set forth therein, against the objections of the defendant then and there made at the time, and to which action on the part of the court the defendant then and there duly excepted at the time.

Ninth. Because there was no evidence introduced tending to prove the guilt of the defendant.

Tenth. Because the court erroneously refused to direct the jury to acquit the defendant on the evidence presented, to which refusal on the part of the court the defendant then and there duly excepted at the time.

And on the seventh day of May, A. D. 1892, defendant filed his motion in arrest of judgment, in words and figures as follows:

"Now comes the defendant, William Grimm, and moves the court to arrest the judgment herein, and that

no judgment be rendered on the verdict of the jury or finding of the court, for the following reasons, to-wit:

First. That the facts stated or alleged in the indictment do not constitute an offense under the laws of the United States.

Second. That the verdict is insufficient to sustain a judgment.

Third. That the indictment in all its counts is vague, indefinite and uncertain, and does not state any offense under the laws of the United States.

Fourth. Because the court had and has no jurisdiction over the subject-matter of this suit.

Fifth. Because the allegations in the indictment contained are inconsistent and repugnant to one another."

The court overruled both of these motions and sentenced the defendant to one year and one day's imprisonment in the penitentiary at hard labor, to which action of the court the defendant at the time excepted.

On the 25th of June, 1892, the defendant made the following assignment of errors:

Now, at this day, comes the above named defendant and makes the following assignment of errors:

1st. The court erred in not sustaining the defendant's demurrer to the indictment.

2d. The court erred in admitting, against the objections of the defendant, incompetent and illegal evidence offered by the Government.

3d. The court erred in refusing to give directions to the jury, at the instance of the defendant, to acquit the defendant upon the proof offered by the Government.

4th. The court erred in refusing to grant a new trial to the defendant, for the reasons stated in the motion.

5th. The court erred in overruling the motion of the defendant in arrest of judgment.

6th. The court erred in its charge to the jury.

7th. The court erred in receiving the verdict returned by the jury.

A writ of error to the Supreme Court was prayed for by the defendant, and allowed by Mr. Justice Brewer.

POINTS AND AUTHORITIES.

The indictment is bad, and the court erred in not sustaining the defendant's demurrer thereto.

The charge in the second and fourth counts (upon which the defendant was convicted), that the defendant had in his possession and under his control obscene, lewd and lascivious pictures, etc., constitutes no offense under the federal law. The fact could have no possible bearing upon this case.

It is not a sufficient allegation in the indictment to say that pictures are "obscene, lewd and lascivious." Some description at least should be made of the "pictures," to enable the court, upon reading the indictment, to say whether the defendant (if the allegation be true) is guilty of a violation of the statute.

It is not sufficient to follow the language of the statute. The indictment must go into particulars, and every ingredient of which the offense is composed must be alleged and stated with that clearness and certainty necessary to apprise the accused of the crime with which he stands charged.

State vs. Hayward, 83 Mo. 299;
State vs. Buster, 90 Mo. 518;
State vs. Clay, 100 Mo. 583;
State vs. Mellon, 102 Mo. 686;
U. S. vs. Cruikshank, 92 U. S. 542;
U. S. vs. Carl, 105 U. S. 611;
U. S. vs. Slenker, 32 Fed. Rep. 694.

A letter addressed to Huntress or Waters could give no information to McAfee, because no one but Huntress and Waters had a right to receive and open the same. It is not alleged that Huntress and Mc-

Afee are one and the same persons, nor is it alleged that any such person as Huntress exists.

U. S. vs. Whittier, 5 Dillon, p. 35;
U. S. vs. Denicke, 35 Fed. Rep. 407;
116 U. S., p. 616.

The letters of the defendant counted upon in the indictment do not come within the definition of "lewd, obscene and lascivious."

U. S. vs. Clark, 43 Fed. Rep. 574;
In re McDonough, 49 Fed. Rep. 360;
U. S. vs. Wiltberger, 5 Wheaton, 76.

In an indictment nothing material shall be taken by intendment or implication.

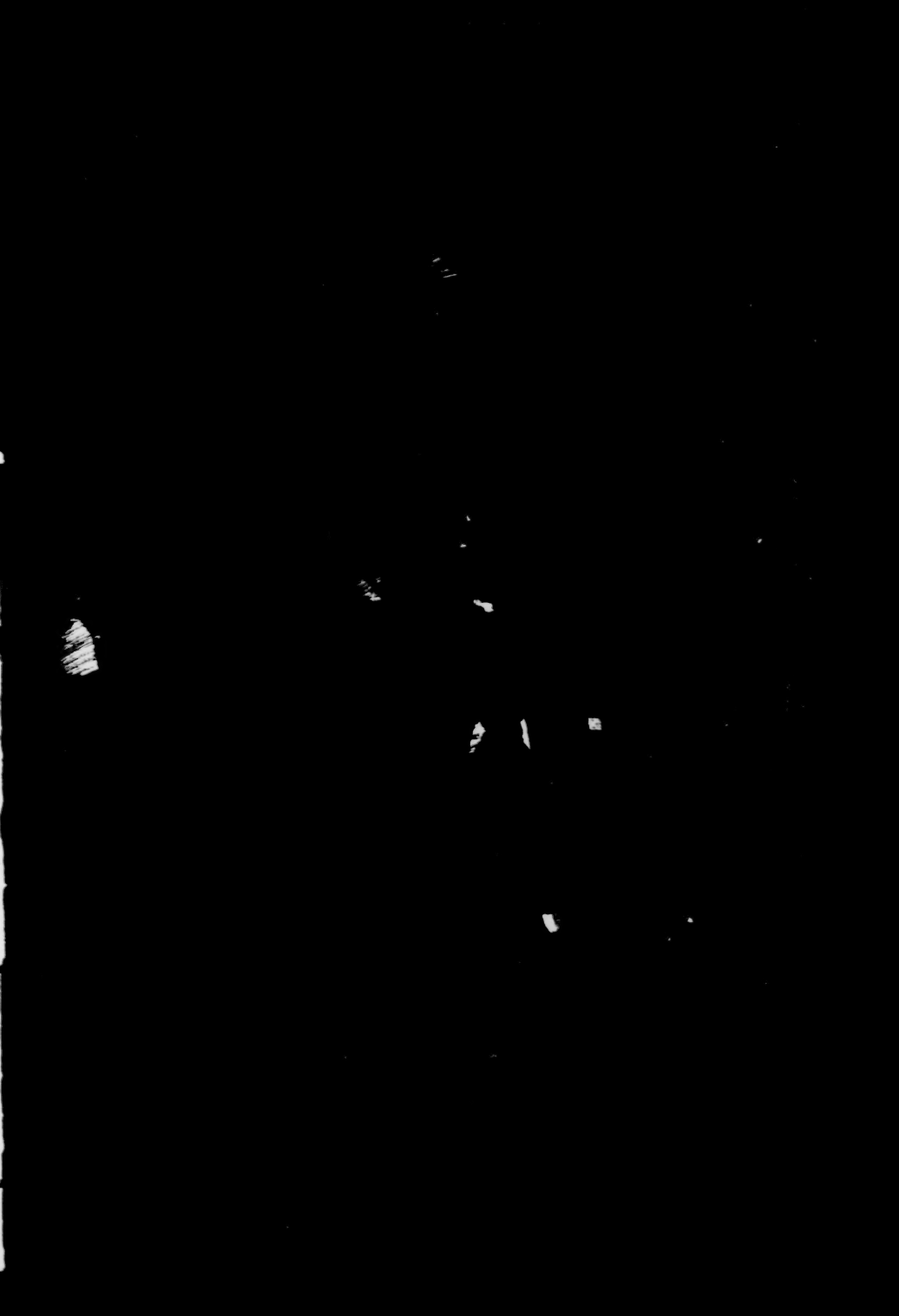
State vs. Myers, 99 Mo. 107.

The Government will not be permitted, through its officers, to *induce* a crime to be committed, and then be heard to complain.

1 Wharton Crim. Law, 9th Ed., Sec. 149;
38 Mich., p. 218;
14 Central Law Journal, p. 67;
18 Central Law Journal, 446, and cases cited.

I submit that the judgment of the District Court should be reversed and the defendant discharged.

D. P. DYER,
Attorney for Plaintiff in Error.



157-604

Office Supreme Court, U. S.
FILED.
JAN 18 1895
JAMES H. McKENNEY,
CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

WILLIAM GRIMM, PLAINTIFF IN ERROR,
v.
THE UNITED STATES. } No. 776.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI

BRIEF ON BEHALF OF THE UNITED STATES.

In the Supreme Court of the United States.

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WILLIAM GRIMM, PLAINTIFF IN ERROR,
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IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

BRIEF ON BEHALF OF THE UNITED STATES.

STATEMENT OF THE CASE.

The plaintiff in error was convicted of a violation of section two of the act of Congress of September 26, 1888, c. 1039, 25 Stat. 496, amending section 3893 of the Revised Statutes, viz:

> "SEC. 3893. Every obscene, lewd, or lascivious book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character, and every article or thing designed or intended for the

prevention of conception or procuring of abortion, and every article or thing intended or adapted for any indecent or immoral use, and every written or printed card, letter, circular, book, pamphlet, advertisement or notice of any kind, giving information, directly or indirectly, where or how, or of whom, or by what means any of the hereinbefore-mentioned matters, articles, or things may be obtained or made, whether sealed as first-class matter or not, are hereby declared to be non-mailable matter, and shall not be conveyed in the mails nor delivered from any post-office nor by any letter carrier; and any person who shall knowingly deposit, or cause to be deposited, for mailing or delivery, anything declared by this section to be non-mailable matter, and any person who shall knowingly take the same, or cause the same to be taken, from the mails for the purpose of circulating or disposing of, or of aiding in the circulation or disposition of the same, shall, for each and every offense, be fined upon conviction thereof not more than five thousand dollars, or imprisoned at hard labor not more than five years, or both, at the discretion of the court.

The defendant demurred to the indictment. His demurrer was overruled. At the conclusion of the Government's evidence, he moved for a verdict of acquittal and, that being overruled, offered no evidence, but after verdict, moved for a new trial and in arrest of judgment. The action of the court in overruling the demurrer and in denying these three motions, as well as its action in admitting certain evidence, is assigned for error. But the assignments will probably reduce themselves at the hearing to the single question, whether on the admitted facts the defendant was guilty of an offense.

THE FACTS.

One McAfee, a post-office inspector and agent of the Western Society for the Suppression of Vice, addressed, under the assumed name of Herman Huntress, the following letter to the defendant, which the latter received:

RICHMOND, IND., *July 21st*, 1890.

MR. WILLIAM GRIMM, *Saint Louis, Mo.*

DEAR SIR: A friend of mine has just showed me some fancy photographs and advised me that they could be obtained from you. I am on the road all the time, and I am sure many of them could be sold in the territory over which I travel. How many different kinds can you furnish? Send me price list showing your rates by the hundred and dozen. Address me at once at Indianapolis, Ind., care Bates House, and I will send you a trial order.

HERMAN HUNTRESS.

The defendant at the time had in his possession a large number of obscene photographs, and in response to this letter of inquiry deposited in the post-office at St. Louis, Mo., for mailing and delivery, the following letter:

ST. LOUIS, *July* 22, 1890.

MR. HUNTRESS, *Richmond.*

DEAR SIR: I received your letter this morning. I will let you have them for $2.00 per doz. and $12.50 per 100. I have about 200 negatives of actresses.

Respectfully,

WM. GRIMM.

The indictment avers and the proof tends to show that the defendant by this letter "meant and intended * * *

to give notice, and did thereby give notice and information to the writer of said first-named letter * * * where, how, of whom, and by what means obscene * * * pictures * * * intended and adapted for an indecent and immoral use might be obtained;" in other words, that the "fancy photographs," the price of which the defendant quoted in his letter of July 22, were the obscene pictures then in his possession.

ARGUMENT.

THE QUESTION STATED.

It is clear that the defendant's letter of July 22 was "knowingly deposited" by him "for mailing," and the only question therefore is whether the letter was one of the things "declared by this section to be nonmailable matter;" in other words, whether it was a "letter * * * giving information, directly or indirectly, where or how or of whom, or by what means any of the hereinbefore mentioned * * * things [obscene pictures] may be obtained." If so, the defendant was clearly guilty.

The defendant insists that because the letter was addressed to an assumed name it was not a letter "giving information" within the meaning of the statute, and in that view he is supported by the decision of Dillon and Treat, J. J. in the similar case of *United States* v. *Whittier*, 5 *Dill.*, 35 (1878), where it was held that the statute does not extend to the case of a letter which on its face gives no information of the prohibited character, written to an assumed name in answer to a decoy letter.

In that case the same McAfee, acting as agent for the Society for the Suppression of Vice, under the assumed name of Nettie G. Harlan, addressed to the defendant Whittier the following letter, which he received:

BUTLER, GA., *Nov. 14th*, 1877.

Dr. WHITTIER:

Can you furnish me an absolutely sure way to prevent conception? What will it cost? How can I get it? What is the price of your "Marriage Guide"?

Address,

Miss NETTIE G. HARLAN,
Butler, Georgia.

The defendant answered the inquiry by the following letter, which he deposited in the mail:

Miss NETTIE G. HARLAN, *Butler, Ga.:*

I have what you desire. It is perfectly safe, sure, and healthful, and can be easily used. The price is ten dollars, sent by express only on receipt of price. Price of "Marriage Guide" is fifty cents.

Respectfully,

C. WHITTIER, M. D.

The precise ground of Judge Dillon's decision is stated in the following passages from his opinion (5 Dill., 41–43):

> The facts in the case now under consideration show that the defendant is as morally guilty as if the letter he was answering had been written by a person seeking the prohibited information, and not by a detective. But I am of the opinion that these facts do not clearly bring the case within the particular clause of the statute on which the indictment is

founded. The indictment charges that the defendant knowingly deposited in the mail a letter *giving information* where, how, and of whom an article or thing designed and intended to prevent conception could be procured. This was in answer to a fictitious letter of inquiry. The letter written and mailed by defendant was addressed to a person who had no existence. *On its face it did not show that it was within the prohibited statute.* If it had been suffered to go through the mail to the place to which it was addressed it would not have been called for, but would have been sent to the Dead-Letter Office, and could not have given to any person the prohibited information. The defendant doubtless intended to give the inhibited information, but the statute does not apply to a letter merely intended by the writer to give such information, but to a letter "actually" giving the information. If a letter of inquiry seeking the prohibited information had been written by an actual person, although under a feigned name, an answer in reply, giving such information, would present a case distinguishable, it would seem, from the one under consideration.

I place my judgment in this case upon the single ground that the sealed letter written by the defendant, addressed to a person who had no existence, and which *on its face gave no information of the prohibited character*, and which is brought within the statute only by the fictitious letter of inquiry written by a detective, is not the "giving of information" within the meaning of the statute. At all events, it is not certain that Congress intended to punish such an act, and therefore, upon the principle above mentioned, that criminal statutes are not to be extended by judicial construction to cases not clearly and unmistakably within their terms, my judgment is that this prosecution, on the admitted facts, can not be sus-

tained. It is a case of clear moral guilt, but not of legal criminality. There is no legal crime committed, although the defendant did not know of the fact which deprived his act of its criminal quality. (1 Bish. Crim. Law [5th ed.], sec. 262.) In this respect the case falls within the principle strikingly illustrated by *Rex* v. *McDaniel* [Foster, 121; 2 East P. C., 665], above referred to.

In order to prevent misconception of the decision now made, it may be proper to add that we only decide the narrow and single point that the letter written and deposited by the defendant did not give the prohibited information, and hence is not within the statute. It would present a different case for consideration if the letter written and deposited by the defendant had been capable, into whosesoever hands it might have fallen or come, of imparting the prohibited information.

We do not decide that decoy letters can not be used to detect persons engaged, or suspected to be engaged, in violating criminal laws, but recognize the doctrine that such letters may be so used. We only decide that the defendant, by his answer to the decoy letter, did not, under the special circumstances of the case, bring himself within the criminal prohibition of the act of Congress.

It would also present a different case if the letter of inquiry had been written by some person actually seeking the prohibited information for immoral purposes, although written under an assumed name, and the defendant had mailed such a letter as he actually wrote and deposited in this case.

In the case at bar, Judge Thayer declined to adopt Judge Dillon's view, but held, on the contrary (Rec., 14), that—

> If a letter gives information where obscene books or pictures can be obtained it is an offense to deposit

> such a letter in the mail with intent to give such information, and thereby to aid in the sale and distribution of such books and pictures, even though the party addressed happens to be an official in the service of the Government; and if such act is done voluntarily and intentionally—that is to say, if the nonmailable letter is deposited in the mail by the accused without solicitation on the part of the officer that the mail be used to convey such intelligence—the weight of judicial opinion seems to be that the act does not lose its criminal character, though the offense may have been committed in responding to an inquiry from a person in the Government service, which was made under an assumed name for the purpose of concealing his identity.

IT IS IMMATERIAL THAT THE DEFENDANT'S LETTERS TO MCAFEE INFORMING HIM WHERE OBSCENE PICTURES COULD BE OBTAINED WERE ADDRESSED TO HIM UNDER AN ASSUMED NAME.

I submit that the distinctions attempted to be drawn by Judge Dillon are without foundation. We have a case in which a real person (McAfee) applied to the defendant for information "where, how, of whom, and by what means" obscene pictures might be obtained, and the defendant "knowingly deposited" "for mailing" a letter giving that information. What difference does it make that this real person who applied for the information and to whom the defendant mailed a letter "giving the information," adopted an assumed name for the purpose of concealing his identity, and that the defendant's letter was addressed to him by that name?

The letter was none the less one "giving" prohibited information, and the information was in fact imparted to

McAfee, for he received and opened the letter, although that was not necessary to complete the defendant's offense. It was enough that he "knowingly deposited for mailing" a letter which contained prohibited information. Whether the person to whom such a letter is addressed takes it from the mails, or opens it, or ever becomes in fact possessed of the information which it contains is immaterial to the sender's guilt. Indeed, the statute expressly forbids the delivery of the letter and makes it an additional offense on the part of the person to whom it is addressed to knowingly take it from the mails. A letter addressed to one who dies before its receipt, or which the person to whom it is addressed voluntarily declines to receive or to open, comes as clearly within the prohibition of the statute as a letter received, opened, and read.

It may be that a sealed letter, written in answer to an inquiry and addressed by mistake to the wrong person, but still to a real person living at the place of address, would not violate the statute if the allusions of the letter were too indefinite to be understood except by the writer of the letter of inquiry. But that would be because the letter does not and can not "give information" to the person to whom it is addressed, and the only person entitled to receive or open it. But a letter giving prohibited information intelligible to the person addressed, if he should receive it, would be a violation of the statute, although addressed to him by mistake at the wrong place, *e. g.*, Fourth street, Cincinnati, instead of St. Louis, although by reason of such mistake he might never receive the letter.

It is not the communication of prohibited information, but the mailing of a letter containing the information, that the statute condemns.

But speculation on such cases is not important. We have at bar the plain case of a letter addressed to a real person at the place and under the name designated by him; a letter which he is entitled to call for by that name; a letter intended by the defendant for him as the writer of the letter of inquiry; a letter containing language meant to inform him as the writer of the letter of inquiry and which, in fact, does inform him "where, how, of whom, and by what means," lewd pictures may be obtained. What more is necessary to constitute an offense? Judge Dillon has simply failed to analyze the case properly, as is manifest from his suggestion that "if a letter of inquiry seeking the prohibited information had been written by an actual person, although under a feigned name, an answer in reply giving such information would present a case distinguishable, it would seem, from the one under consideration." But that is precisely the case before us—a letter of inquiry seeking prohibited information, written by an actual person under a feigned name. If McAfee had used his own name and the defendant had addressed him by that name, Judge Dillon concedes that the defendant would be guilty. According to his view, then, it is only necessary to use an assumed name in order to evade the statute and escape punishment.

McAFEE'S MOTIVE IN ASKING THE INFORMATION IS ALSO IMMATERIAL.

Judge Dillon's other distinction is equally groundless. He says:

> It would also present a different case if the letter of inquiry had been written by some person actually seeking the prohibited information for immoral purposes, although written under an assumed name, and the defendant had mailed such a letter as he actually wrote and deposited in this case.

But the motive of the person who inquires "where, how, of whom, or by what means" lewd pictures may be obtained, is wholly immaterial to the guilt of the person who knowingly mails a letter containing such information.

AN OFFENSE DOES NOT LOSE ITS CRIMINALITY BECAUSE A DETECTIVE PRESENTS THE OPPORTUNITY FOR ITS COMMISSION.

The question thus far discussed, which is simply whether the defendant's letter is a letter "giving information" within the meaning of the statute, should not be confounded with the other question whether an act otherwise unlawful loses its criminality if committed in pursuance of the solicitation of a detective. The law is settled that in such a case as the one at bar the guilt of an offender is not affected by the circumstance that he was incited to commit the offense by a detective. The authorities are collected in a note of Francis Wharton to the case of *Bates* v. *U. S.*, 10 Fed. Rep., 92, 97.

To the same effect are the following later cases: *United States* v. *Moore*, 19 Fed. Rep., 39, 40 (1883). Blodgett, J.

United States v. *Wight*, 38 Fed. Rep., 106 (1889). Brown and Jackson, J. J.

United States v. *Dorsey*, 40 Fed. Rep., 752 (1889). Hill, J.

State v. *Stickney* (Kans.), 36 Pac. Rep., 714. In the following cases a detective was held not to be an accomplice: (*Commonwealth* v. *Baker*, 155 Mass., 287, 291; *People* v. *Noelke*, 94 N. Y., 137, 142; *People* v. *Bolanger*, 71 Cal., 17, 19; *State* v. *Brownlee*, 84 Iowa, 473, 476.)

It should also be borne in mind, to use the language of Judge Thayer, in overruling the motion for a new trial, that "in the case at bar the evidence did not show that the accused was solicited to commit the offense charged in the indictment. The selection of the public mail as the medium for giving information where the most lewd and indecent pictures could be obtained was the voluntary act of the defendant, and he is criminally responsible therefor." In this respect the case differs from *United States* v. *Adams* (59 Fed. Rep., 674), where a detective suggested that the defendant should use the mail, and inclosed a postage stamp for that purpose, although the decision in that case seems opposed to well settled principles of law.

In *United States* v. *Moore* (19 Fed. Rep., 39), Blodgett, J., charging the jury, said:

> Sending such matter [concerning a lottery through the mails] in response to a letter from a fictitious person is just as clear a violation of the law as if sent to a real person described by the name to which the letter was addressed. The name of the person to whom the inhibited matter is addressed is no part of the offense, but the question is, Did the defendant send through the mails a letter or circular concerning lotteries? And you have no concern with the

good faith of the person who incited or induced, by a decoy letter, the sending of such matter, any more than you have with the good faith of a person who sends marked money through the mails in order to detect one who is stealing from the mail. When defendant received the letters in question he was under no obligation to so answer them as to violate the law.

THE DEMURRER TO THE INDICTMENT.

The indictment contained four counts, but the defendant having been acquitted under the first and third counts by direction of the court, it is necessary to consider only the second and fourth counts, and they present the same questions, relating, as they do, to substantially similar transactions.

The first and second grounds of demurrer to the second and fourth counts are as follows:

> First. That it does not individuate any offense.
>
> Second. That the allegations in said count contained are vague, indefinite, and uncertain, and are not sufficient to, and do not, constitute an offense or statement of a cause of action against him.

Without resorting to the rule that "an impracticable standard of particularity is not required in an indictment" (*Evans* v. *United States*, 153 U. S., 584), the objections are without merit. The accused was clearly and fairly informed of the charge against him, sufficiently so to enable him to make his defense, and that is all that can be required.

As the letters averred to be nonmailable did not, on their face, appear to be of an unlawful character, extrinsic

facts were averred to explain the meaning of the terms employed by the defendant, and, as introductory, each count averred possession by him of large quantities of obscene pictures. The deposit in the mail of a nonmailable letter is then charged, and the count concludes with the averment that Grimm meant to and did by the letter in question give unlawful information.

The extrinsic fact of the defendant's possession on the date of his receipt of the letter of inquiry and the mailing of his answer thereto, of "obscene, lewd, and lascivious pictures, papers, and prints," etc., at least rendered ambiguous the meaning of the term "fancy photographs" used by him in quoting prices. It was proper, therefore, to aver the real and understood meaning, and such averment presented an issuable fact for the determination of the jury.

The following is the third ground of demurrer:

> Third. That under a letter mailed and addressed to Mr. Herman Huntress, Bates House, Indianapolis, Ind., no information of any kind through the United States mail was or could be given to Robert W. McAfee and divers other persons, &c., it not being alleged that Robert W. McAfee and Herman Huntress are one and the same person, or that that person is as well known by the one name as the other.

This ground of demurrer erroneously assumes that a letter giving prohibited information is not unlawful, unless it gives the information to the *addressee;* and it also ignores the express averment that Grimm intended by his reply letter to give information, and did give information, to Robert W. McAfee, etc. The latter

averment would be sustained by proof that McAfee was the writer of the letter of enquiry, for the inference would be conclusive that Grimm meant his reply for such person.

It was not necessary to aver that the letters gave information to any particular person; it would have been sufficient to allege that Grimm deposited in the mail a letter "giving information, directly and indirectly," how, where, etc., prohibited matter might be obtained. The term "giving" is used in the statute as synonymous with "containing."

The fourth and fifth grounds of demurrer are as follows:

> Fourth. The defendant's alleged letter therein described and addressed to Herman Huntress on its face gave or gives no information of a prohibited character, nor taken in combination with the alleged letter of the alleged Herman Huntress to defendant does it give any such alleged prohibited information.
>
> Fifth. That the letters to and from the defendant, as therein alleged, do not pretend, nor can they be so understood, or the terms therein contained be enlarged by construction, to mean that there could or would be furnished by defendant or any one else any "obscene, lewd, and lascivious pictures, papers, and prints of an indecent character and intended and adapted for an indecent and immoral use."

It is true that Grimm's letters, considered by themselves, or in conjunction simply with the letters of enquiry, are susceptible of an innocent construction, but it is matter of common knowledge, of which the court will take judicial notice (*Press Pub. Co.* v. *McDonald*, 63 Fed. Rep., 238), that a traffic exists in indecent photographs and other

obscene articles, and with such knowledge the term "fancy photographs," adopted by Grimm in quoting prices, is susceptible of having been used in the sense of obscene photographs. It was, therefore, proper to aver the true import and meaning of the language employed, as was done in the concluding portion of each of the two counts under consideration.

By the grounds of demurrer in question, the defendant in effect insists that the language of the letters must be taken in its literal and innocent sense, no matter what its covert and (to others) intended and understood meaning, so that if a cypher were employed it would not be competent to prove the translated meaning. But the prohibition of the statute is against the use of the mails to convey information, "directly or indirectly," and the terms of the statute are directed against evasions of its provisions, as well as against open and direct violations.

The rule applicable to cases of libel is analogous. In such actions—

> Words which on their face appear to be entirely harmless may, under certain circumstances, convey a covert meaning, wholly different from the ordinary and natural interpretation usually put upon them. To render such words actionable it is necessary for the pleader to aver that the author of the libel intended them to be understood, and that they were in fact understood by those who read them, in their covert sense. (*Maynard* v. *Fireman's Fund Ins. Co.*, 47 Cal. 207, 208.)

> If the language published does not naturally and *per se* * * * convey the meaning the plaintiff contends for, or if it is ambiguous or equivocal and

> requires explanation by some extrinsic matter to show its relation to the plaintiff, and make it actionable, the complaint must allege by way of inducement the existence of such extrinsic matter. (Townshend on Slander and Libel, 4th ed., sec. 308.)

As said by Wharton in the ninth edition of his work on Criminal Practice and Pleading:

> SEC. 196. If the writing on its face comes short of being either an order, warrant, request, or other statutory term, averment will be made and evidence received bringing it up to the required standard, as where the name of the party addressed is omitted, or where the body of the writing is on its face insensible. And where the fraudulent or illegal character of the document does not appear on its face, this must be helped out by averments.

It is immaterial, therefore, whether the letters set out in the second and fourth counts, when construed separately or together, fail to give unlawful information, if with the extrinsic fact averred in each count of the possession by the accused of lewd and obscene matter or of facts of which judicial notice is taken, the meaning of the letters mailed by Grimm is ambiguous. The concluding averment of each count as to the real and understood meaning makes a question for the jury as to the true meaning in the light of the evidence.

It would seem that a prior indictment against Grimm had been held defective, for want of averment of extrinsic facts showing that the letters set out in the indictment were of the improper character prohibited by statute. (45 Fed. Rep., 458.)

The subject was considered by the court below during the trial upon an objection to evidence, as appears from the following passage from the bill of exceptions (Rec., p. 36):

> The COURT: The question was raised as court adjourned whether the Government, having offered in evidence the letters that are alleged to have contained the prohibited information, and having charged in the indictment that the letters did give the prohibited information, is now entitled to show that after the letters were received by the witness containing the price list the witness thereupon sent an order for pictures, and in return received a lot of indecent pictures; that I understand to be the question to which objection is made. The offense, under this statute, consists in depositing a letter in the mail which gives information where lewd, lascivious, or obscene pictures may be obtained. The statute declares that the deposit of a letter in the mail that gives such information, directly or indirectly, is an offense. Now, to establish an offense under that section it is manifest that it is not necessary for the Government to produce a letter that is so worded that it would convey to every casual reader the prohibited information. It is sufficient under this statute if the Government shows that the letter complained of did in fact convey the prohibited information and that it was intended to convey such information.
>
> A letter might be so worded that to a casual reader it would be perfectly harmless and would convey no information of the prohibited kind, and yet, by reason of certain extrinsic facts known to the sender of the letter, and known to the person who received it, and known to both of them, it might convey the identical information that this statute prohibits. Therefore it is perfectly proper, in my judgment, to allow the Gov-

> ernment, it having alleged that these letters conveyed certain species of information, to prove any fact or any state of facts that tends to support that allegation, or to convince the jury that the letter did, in point of fact, convey certain information which the statutes prohibits. Therefore I shall permit the Government in this case to show by the witness, if it can, that after the receipt of the price list certain pictures were ordered, and I shall also allow it to show the character of those pictures unless the character of the pictures is an admitted fact.

And also in overruling the motion for a new trial and in arrest of judgment (Rec., 13).

> 1. The first [question] is whether the indictment is bad because the letters set out in the indictment and alleged to be nonmailable do not in themselves show with certainty that the pictures therein referred to are either lewd, lascivious, or obscene.
>
> This question was considered to some extent during the trial, and has since been more carefully considered. The court decides the question in the negative. It holds that a letter is nonmailable if it in fact conveys and was intended to convey information to any person where obscene pictures or literature may be obtained, even though to a casual reader it may seem harmless; the court further holds that in a prosecution of this character the Government is not confined to the letter itself, but may show by any competent extrinsic testimony that the letter gives information which the statute prohibits being given through the mail, and that it was in fact intended to convey such information. If the character of a letter can not be thus shown by extrinsic facts the statute under which this indictment is drawn could be easily evaded and would prove a dead letter.

OBJECTIONS TO THE ADMISSION OF EVIDENCE.

The second assignment is as follows (Rec., p. 56):

> 2nd. The court erred in admitting against the objections of the defendant incompetent and illegal evidence offered by the Government.

The evidence is set out, beginning at page 25 of the record.

The objection on page 25 to the introduction of any testimony under the indictment "on the ground that there is no offense charged therein of which the Federal Statutes can take notice," requires no further notice.

> The power vested in Congress to establish "post-offices and post-roads" embraces the regulation of the entire postal system of the country. Under it Congress may designate what shall be carried in the mail and what excluded. *Ex parte Jackson*, 96 U. S., 727; *In re Rapier*, 143 U. S., 110.

The evidence of what took place on the occasion of the visit of McAfee and the deputy marshal to Grimm's place of business, testified to on pages 26 and 49 of the record, was competent for the purpose for which it was received, viz, because it "might throw some light on the question of what information the letters contained."

The competency of the proof that McAfee on receiving Grimm's letters ordered "fancy photographs" and got in response lewd pictures, is made manifest by the trial judge in his ruling on the objection. (Rec., pp. 35–38.) The evidence tended to show the real meaning of the defendant's letters.

The objection (Rec., p. 40) to the admission in evidence of the negatives of the photographs furnished to McAfee (under fictitious names) and of other negatives, taken from Grimm at the time of his arrest (Rec., 27, 39), was properly overruled, for like reasons.

The exception (Rec., 37) to testimony concerning the contents of letters mailed to Grimm in response to his communications, set forth in the second and fourth counts of the indictment, because delivery to a carrier was not a deposit in the mail, was not well taken. (Sec. 5468, Rev. Stat.) As the carrier, however, testified that he actually delivered the letters (Rec., p. 42), and it was not essential that there should be a delivery through the mail, the objection is unimportant.

I respectfully submit that there is no error in the record, and that the judgment should be affirmed.

LAWRENCE MAXWELL, Jr.,
Solicitor-General.